University of California Publications in ECONOMICS

VOLUME IV
1913-1918

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IN
ECONOMICS
Vol. 4, No. 3, pp. 115-231 April 2, 1918

THE CONFLICT OF TAX LAWS

BY
ROWLAND ESTCOURT, PH.D.

UNIVERSITY OF CALIFORNIA PRESS
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THE CONFLICT OF TAX LAWS

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CONTENTS

PREFACE

At the first meeting of the National Tax Association in 1907, Mr. Lawson Purdy is reported to have stated that the constitutions of at least twenty-four states contain limitations upon the power of the legislature which render impossible the adoption of any sensible system of taxation. The acceptance of such a statement as true, implies that twenty-four states are condemned to a system of taxation which under no circumstances can be sensible until the constitutions of those states are revised—a sufficiently serious proposition. That the citizens of those states ever intended the existence of such a condition of affairs is unbelievable, as is also the idea that they will permit it to continue for any unreasonable period after they have been convinced of the fact.

My original intention was to compare in detail the tax systems at present existing, by means of tabular statements, but however interesting such a comparison might be to a student of statutory law, on further consideration it appeared to be of scarcely any public value at the present stage of the inquiry. It became obvious that to establish a case for the appointment of competent commissions to investigate the subject would provide ample scope for such a preliminary survey as the first article devoted to this subject must necessarily be.

The commissions already existing, together with their tax experts and staffs, merely require an extension of their instructions, as in the state of Nebraska, "to compare conditions in the state with conditions elsewhere." The desired result would certainly follow.

I have therefore confined my efforts to dealing with the matter from fresh angles, and have endeavored to accomplish this not only by the method of treatment but by directing attention to various cognate matters in the fiscal field which might at first sight appear to be digressions but which it is essential to bear in mind in any attempt to rouse public opinion to the gravity of the

situation. The broad principles underlying the considerations advanced in this connection should facilitate agreement among those who may be charged with procuring the final result.

I am particularly indebted to Professor Carl C. Plehn for the great assistance afforded by his unique and valuable summary of the "Revenue Systems of State and Local Governments, 1902," published in the Special Report of the U. S. Census on *Wealth, Debt, and Taxation*, 1907. Without the use of the results of the work done in the preparation of that summary, as a starting point for research, the labor involved in the preparation of such an essay as the present would have been immensely increased.

BERKELEY, CALIFORNIA, March 1, 1916. R. E.

INTRODUCTION

1. *Definition.*—When a term which is commonly regarded as the property of pure science is used in connection with a subject which is associated in the public mind with politics and material concerns, some definition may properly be demanded to justify that use. In biology, coördination is the specific characteristic of vitality; in fiscal science, coördination is essential to the vitality of the economic relations of life. Thus coördination of taxation means nothing more than the regulating and combining of existing systems of taxation so as to produce harmonious action.

2. *Object of inquiry.*—It is proposed to show that, in view of the trend of economic progress, the lack of harmony between the existing systems of taxation indicates the need for coördination, and that any scheme for remedying the defects, to prove satisfactory, must involve a general consideration of certain vital facts underlying the whole problem of taxation.

Every country has experienced the difficulty of fairly apportioning the burdens of taxation between the state and the local governments, but in a commonwealth like ours the problem is intensified by the constant weakening of the fiscal basis of state citizenship through the operation of federal agencies. Problems of double taxation resting upon interstate and interlocal complications arise to confront us at every turn. The machinery of production and distribution has become so complex that the disarrangement of any one part may throw the whole organization out of gear. The overburdening of any one class may have the most unlooked for consequences for another class. An undue pressure on a railroad may decrease facilities rather than increase revenue; the assessment of mortgages may hit the farmer rather than the money lender. It becomes increasingly unsafe to disregard the influence of each economic class upon the other. Steam and electricity have knit the various parts of the country closely together, have made each state and group more dependent on its neighbors and added to the matters in which the whole

country benefits by joint action and uniform legislation. The people, and especially the trading and manufacturing classes, come to look more and more to the national capitol for what enlists their interests, and less and less to the capitol of their own state; it is the nation and not the state that is present to the imagination of the citizens as sovereign. It is clear that the development of the constitutional power as between the nation and the states has not yet stopped, and present appearances suggest that the centralizing tendency will continue to prevail.

3. *Excessive and deficient standardization.*—It is one of the strangest of paradoxes that, in a country where the genius for standardization has developed to an extent unparalleled in history, law should remain entirely outside the standardizing influence. Almost everywhere else in the world, civilized and uncivilized, one finds infinite variety in the form of city development, in intercommunication, in art, and in every mark of human handiwork, but always the law, and especially the law of taxation, has been codified and standardized. Still earlier in history uniformity in administration over every unit of the widest empires has been a feature of government preceding any attempt to standardize in other matters. In this country everything is reversed. It has remained for the United States of America, while carrying standardization into matters never before standardized, for no discoverable reason, beyond mere caprice or absence of scientific treatment, to inaugurate—one could not say evolve—a system of law and precedent in the face of which even a super-jurist might stand aghast.[1]

4. *Of interest to all classes.*—A distinguished American citizen has remarked that "it is a most singular idiosyncrasy of the American people that they will defer or neglect the study of the most vital question which can concern a citizen. Probably not more than one citizen out of a hundred even amongst those

[1] "The law reports of a year extend to about two hundred and sixty-two thousand pages (262,000). . . . It will take about eight years to read the reports of one year and at the present rate of publication there will then be on hand new reports sufficient to keep students employed for fifty-six years, at the end of which time they should be able to stand a good civil service examination on leading principles."—U. M. Rose, president of the American Bar Association, *in* Report, p. 246, 1902.

who pay taxes can be induced, as a rule, either to talk about or study how much his state or local government costs, and so long as this is the situation, and until the American citizen does become a student of taxation, it is difficult to see how the national and state governments can be wisely and justly managed.''[2]

That so astute an observer and thinker as Dr. Wells should use the phrase ''even amongst those who pay taxes,'' is to be regretted. It at once alienates the interest of the public at large by letting them imagine that only one class of citizens has any concern in the matter. It suggests the greater part of an audience leaving a meeting under the impression that only committee business is in progress. This should not be so. The sooner it is realized that all people pay taxes and are equally interested in the problem, the sooner will the subject cease to be neglected. By an equally valid process of elimination, one could discard all except the collector who actually pays in the money to the treasurer. All payers of large sums to the national or local treasury will be found on examination to have merely acted in the capacity of tax collectors. What has happened is that, instead of the governing body collecting from each individual the operation has been deferred until certain persons have extracted from those below a sufficient bulk of wealth to offer a more satisfactory basis of assessment than when it was in the hands of many individuals. A bee-keeper does not attempt to take the honey from each bee; he waits until it has been deposited in the comb, and whether money (or its equivalent credit) be in the bank account of the tax collector or of the capitalist, it is in an analogous position to that of the honey in the comb.[3]

Not only the student but the citizen, whatever his position, must become interested in the ultimate disposal of the proceeds

[2] D. A. Wells, *Theory and Practice of Taxation*, p. 10.

[3] The above allusion is not based upon any theory of incidence. What is in mind is the selection of the opportune moment for the collection of a tax. The idea sought to be conveyed is complementary to that of the process of stoppage at source; it is collection from the reservoir rather than from the streamlet. In shifting of taxes the process consists in paying the tax first and then recovering it from someone else; here the opposite process is in mind, namely, the obtaining it from someone else, directly or indirectly, and then paying it to the collector. Taxes are a necessity, and a wage which is sufficient for the minimum of needs must include sufficient

of accumulations of wealth, and it will be found that the poorer the person, the greater his or her relative need to be interested. It has been repeatedly proved that the poor pay not only a greater rent per cubic foot of room space occupied, but probably also a greater proportion of taxes per dollar of expenditure than their richer neighbors. The recognition of this fact has had the greatest influence in recent years in directing the efforts of fiscal administrators toward reaching untaxed sources of revenue.

5. *Present Activities.*—Notwithstanding the apparent apathy of the general public in so vital a matter, there is truth in the statement that "questions of taxation are now engaging the attention of the legislatures and of the courts, as well as of the economists, to a greater extent than ever before. New experiments in taxation are being tried in the attempt to reach the infinite forms of property and business under the complex conditions of modern society.[4]

On the one hand we have the single taxers seeking to sweep away the whole fiscal fabric and to revert to the physiocratic idea of extreme simplification, while on the other we have those who are striving for an extension of the present system by the advocacy of local option in taxation. It has been suggested that "if every county were given the right to exempt from taxation any class of property or to reduce the assessment upon any class of property, it would be possible for any progressive community

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for the payment of taxes. By the payment of a wage which excludes the item necessary for taxes, the faculty of the wage earner has been included in profit and that is where the fiscal administrator finds it.

It may not be out of place to state, for the benefit of the general reader, that the term "faculty" appropriated by writers on finance is used in the precise sense in which it is used in law. In certain actions for breach of contract the damages have always been assessed, not according to the extent of the injury suffered by the plaintiff, but according to the ability to pay of the person on whom the assessment is made, taking into account financial resources, estimated earnings, income, fixed property and ability to earn. This basis is termed faculty. Taxation is based on an assessment of the property of the individual and the just principle of its incidence, as now generally recognized, is that it has no relation to the personal benefits conferred—the converse of the legal position just recited—but is proportioned to the faculty of the person assessed—his complete ability to pay, having regard to his every resource of property and income. Thus the adoption of the term faculty, from the legal vocabulary, by writers on finance, has the supreme justification of perfectly meeting the requirement for a correct idea of the thing implied.

[4] F. N. Judson, *Taxation*, p. iii.

to adopt methods already proved valuable elsewhere, or to make experiments on its own account which would be useful object lessons to the rest of the country."[5] Such a view is supported by no less an authority than Professor Seligman, who says that "if each locality is now, through the separation of state and local revenues, divorced from the others and is left to work out its fiscal salvation, to a certain extent at least, independently, it is obvious that each locality will be better able to adjust its fiscal system to its own particular fiscal needs." And again, "There is surely no reason why certain localities should not, if they choose, experiment with the exemption of personal property. Where the general property tax is utilized only for local purposes, it will be far easier to accomplish the result than where it is used also for state revenues.[6]

It seems paradoxical that those who most strenuously oppose local option in taxation are the most ardent advocates of an extension of the present system of multiplicity of objects. On the other hand, the opposition to the physiocratic idea of the single tax arises not so much from those who object to its principle, as from those who would be quite willing to support it if they could be assured that the single object selected for taxation would be some form of property different from that in which they happen to be specially interested.

That the need for simplification recognized by every European state, has not been felt in the same degree in this country is due to the incompleteness of crystallization, but all the consequences which accompany that stage are being prematurely forced upon us by the short-sighted policy which has permitted land to be monopolized in advance of settlement, a process that brings about all the problems of a thickly settled country by restricting the population to limited areas. The resulting difficulties are those of the vast distances of Russia combined with those of a densely populated area like Belgium, without the ameliorating circumstances which accompany an older civilization; and these difficulties intrude themselves into all fiscal con-

[5] Lawson Purdy, Proceedings of National Tax Association, 1907, p. 74.
[6] E. R. A. Seligman, *Essays in Taxation*, pp. 357, 374.

siderations. The effect of the demand for simplification is shown in the tax systems of Europe—at least in the western portion—by the tax legislation of the last century in France, Great Britain, Germany and Switzerland. With the help of the light of financial science many of the relics of the older tax systems have been cleared away, but "the reduction in the number of taxes has not yet shown that a single and exclusive tax would comply with the varied requirements of equity and expediency.[7]

6. *The urgency of the question.*—If the public mind is not prepared for the adoption of some scheme of coördination without further local experiments, it would seem that either some more rapid form of political education must be adopted to bring home to the electorate a conception of the anarchy of the present fiscal arrangements, or it will be brought home more unpleasantly by the logic of events and the fermentation consequent on the adoption of a system of local option in taxation. The province of the present essay does not extend to an attempt to discriminate between the merits of rival political programs in the realm of fiscal administration; it is limited as far as possible

[7] Zuzugeben ist zunächst dass ein Bedürfniss relativer Vereinfachung sich in allen Steuersystemen Europas seit hundert Jahren Bahn gebrochen hat, ob wir die französische, die deutsche, die britische oder gar die schweizerische Steuergesetzgebung befragen. Vielfältig ist im Lichte der neueren Finanzwissenschaft mit Resten des älteren Steuerwesens aufgeräumt worden. . . . Eine einzige und auschliessliche Steuer, statt eines Systems von verschiedenen Steuern, entspricht einer Reihe von Anforderungen nicht, welche vom Standpunkte der Gerechtigkeit wie vom Standpunkte der Zweckmässigkeit gestellt werden.—Gustav Cohn, *System der Nationalökonomie,* II, 1885–1898, 252, 253.

The real objection to a single tax is not in equity or incidence, but in fiscal expediency, the eventual absence of elasticity of revenue. A remarkable illustration was afforded by the collapse of the federal revenue consequent on the falling off of imports in 1915 due to the war. Had there been complete reliance on the customs duties—as many would have wished—the difficulties presented could only have been tided over by the temporary expedient of borrowing for current expenses, the serious consequences of which at this precise juncture could scarcely be overestimated. The very fact of the ability of this country to produce all that it requires in raw and manufactured materials and, if need be, to become entirely independent of foreign trade—a position only possible for the first time in history—and the obvious effort being made in this direction, shows how easily a single fertile source of revenue not only may, but must, attain its maximum yield and, in this particular instance, evince a strong tendency to recede from that point. The unique capacity of this country just alluded to, will probably eventually force a discard of customs as a source of revenue except so far as it incidentally arises from protective duties strictly limited to the difference between wages paid in the country of origin and the wages paid in this country.

to a consideration of the difficulties which beset the path leading to coördination and to the suggestion of possible solutions, starting from where we find ourselves today instead of from any abandoned ideal or from a mental position that has not been widely comprehended. The assumption of this attitude does not, however, take for granted the existence of any sort of agreement upon the definition of what constitutes a good tax, what is the best method of collection, and whether a scheme of taxation should have regard only to the revenue of the current year, or whether it should be charged with general considerations of prosperity and wealth distribution. These and many other matters, although outside the immediate question, must necessarily intrude themselves as a preamble to any basis of agreement.

PART I

THE PROBLEM

CHAPTER I

PRELIMINARY

1. *Preliminary considerations.*—In order to approach the question of coördination with any hope of satisfactory results, a primary condition is some sort of uniformity in the angle of view toward the basic conceptions that underlie the terminology with which people are familiar. If the history of the ideas involved be carefully examined, and cleared from the accretions due to commentary inspired by the wealth of those whose interests in all ages have not been coincident with the interests of the commonwealth, the main facts will be found to be far more simple than generally supposed.

Any attempt to bring states and local authorities into agreement on matters of taxation must involve some recasting of popular conceptions of the relations of the individual to the commonwealth. At present one might imagine that the people of each state had different group views on the subject, overlooking the fact that the differing systems have grown up under legal constructions of constitutions in the drafting of which probably not more than one per cent (and that not always the most competent hundredth) of the present inhabitants had any part. That the pioneers of a state should thus be permitted to constrict the development of affairs of all future inhabitants is inconsistent with the genius of America. "In a community where public opinion is alert, no system of taxation can be accepted as permanent unless rational grounds are offered for holding it just; or at least, as resulting in as near an approach to justice as could be attained under any system. Nor can it be maintained without question that our ancestors had authority to enter into agreements binding their posterity, even if they bound them-

selves."[8] "One legislature of a state has no power to bargain away the rights of any succeeding legislature to levy taxes."[9]

It would probably be found on any adequate appeal to the people on matters of taxation that the inhabitants of one state could be brought into agreement with the inhabitants of a neighboring state far more easily than a casual view of existing conditions would lead one to suppose. A dissemination of correct conceptions of vital principles would go far toward ensuring a review of the psychological attitude which is responsible for many defects of vision.

Economic works offer many excellent definitions of the nature of taxation and much instruction can be derived from a careful consideration of these definitions. There are so many good definitions that it would be presumptuous to attempt to discriminate or to improve upon them, even if such an attempt were not foreign to the purpose of this essay. But "all definitions have one general fault; they try to point out the employment of taxes, but they do not show the origin of taxes."[10] They all apply to established conditions without having any regard as to how those conditions came about, and how far those conditions are due to a misapprehension or disregard of the part which taxation played in producing the conditions. It will not therefore imply any disagreement or agreement with any accepted definitions, if it be contended that a more just appreciation of the incidence of taxes and of the appraisement of faculty would be attained were one step taken behind the *status quo* on which such definitions rest.

2. *The field of the inquiry.*—The question is the coördination of taxation and not merely of taxes. Were it the latter the inquiry would be circumscribed by the existing taxes, which might imply that all existing taxes are the best that can be devised.

Colbert is credited with the remark that in the levying of taxes the art is to "so pluck the goose (the people) as to produce

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[8] D. M. Means, *Methods of Taxation*, pp. 13, 23.

[9] *New Jersey* v. *Yarde*, 95 U. S. 104. Opinion of Justice Miller.

[10] "Tous ces définitions (du reste) ont un défaut général; elles essayent d'indiquer l'emploi de l'impôt; mais elles ne déterminent pas l'origine de l'impôt."—E. J. Menier, *L'impôt sur le capital*, p. 77.

the largest amount of feathers with the least possible amount of squawking.'' This is the *art* of taxation, the work of the administrator, but before the art can be exercised it must be systematized by science; otherwise how shall one know in what part to find ''the largest amount of feathers''?[11] Science is a collection of truths; art a body of rules, or directions for conduct. Science takes cognizance of a phenomenon and endeavors to discover its law. So far, therefore, as taxation is a science it cannot be a collection of practical rules, though unless it be altogether a useless science, practical rules must be capable of being founded upon it.

Few things do more to retard the development in the public mind of a true appreciation of the need for reform than the loose citation of established economic deductions, which sound as if they governed the matter in hand, whereas they are strictly applicable only to the subject of production or distribution and merely confuse the issue when applied to a question of taxation. A brief discussion of a few misleading terms in common use may therefore well precede the consideration of general ideas of taxation. An attempt will then be made to indicate the antiquity and chronological order of primal conceptions underlying the adoption of such major sources of taxation as have come to be recognized by the majority of thinking persons. Minor sources of taxation will next be considered, and at a later stage some attention will be given to existing variations of both classes of taxes. It will also be necessary to consider the effect of state boundaries and divided jurisdiction as well as conflicting definitions needing to be reconciled. The problem grows when attention is directed to variations in exemptions, in business taxes and licenses, in judicial interpretations and in definitions adopted by the courts. When to these considerations are added those of variations in assessment and valuation, and constitutional limitations it will be apparent that a sufficiently wide field is open.

Naturally, it is not proposed in the compass of a short essay to attempt the accomplishment of what might well occupy several volumes—an exhaustive analysis of any of these subjects.

[11] Some indication of this has been given on page 121.

But it is essential that sufficient attention should be given to each point to illustrate its effect on the general scheme. The shortest way to coördination of taxation is through the coördination of cardinal ideas on fiscal principles and the elimination of the popular fallacies which those in possession of the avenues of political publicity are able to make do duty for accurate thought.

There is an inevitable limit to the rate of any and every tax, but this can only be ascertained by experiment—the taking of one step at a time. The important point is to have in view an ideal. It may never be reached, owing to changing circumstances quite unforeseen at the period of adoption, but this possibility is not a valid argument against taking the initial steps. It would be a vain prophecy to say whether a tax will cease to yield at twenty-five or fifty per cent.

One of the favorite methods of opposing fiscal reform is to point out some obvious consequences of the adoption of an ideal in its entirety tomorrow morning, even though such an act be physically impossible. Such objectors know full well that human nature is so constituted that very few people can withstand the shock of the conception of a sudden and complete change in the conditions to which they have become accustomed. A familiar illustration can be found in the gradual raising of the prices of articles in daily use. These prices have in some instances been doubled since the opening of the century, but the process has been carried out a cent at a time. To have doubled the price in a day would have caused an outcry, yet the maxim of buying in the cheapest market and selling at the highest price obtainable, implies an intention to establish this rise or a greater one as soon as possible. But nothing save the excuse of a financial panic, or a war, or some phenomenon generally recognized as extraordinary, safely permits of the revelation of this intention in all its nakedness. Prices are raised just so quickly as will allow for the adjustment of the circumstances of the consumer either by economy or increased exertion. Precisely those people who profit by this process, are the people who financially support all politicians who can be procured to resist fiscal reform. These astute traders understand the process—instinctively, if not scien-

tifically—too thoroughly to readily acquiesce in its adoption by any competitor, even though that competitor be the state. The economic effect on the individual is the same whether his resources be diminished by a fall in the purchasing power of his dollar or by an increase of taxes. *Magnum vectigal est parsimonia* is as true today as two thousand years ago.

3. *Misleading terms in common use.*—"Discussions as to the meanings of terms are, it need not be said, hardly ever purely verbal; they in almost every case turn on different conceptions of the same facts, or different modes of grouping the objects under notice. The literature of finance, especially in Germany, is rich in examples, and some of the best known doctrines derive a great deal of their authority from some particular application of an ambiguous word."[12] We get confused by the ambiguous use of modern terms which have gradually supplanted others having a distasteful significance, while the modern terms, wrested from their ordinary setting, embody in their financial acceptance a meaning hallowed in another sphere, but never intended by the framers of those terms to be imported into economic terminology.

The science of taxation is in need of improved and very accurate terminology if the ordinary taxpayer is to be brought to see his true interest in the matter. What would at first sight appear to be an exceedingly helpful definition has sometimes emanated from the bench. "We should not be embarrassed by any subtle meaning to be given to the word 'property' in the constitutional provision. The broad meaning sometimes given to it by law writers whose definitions are more apt to confuse than enlighten, or a meaning which can be evolved only by philologists and etymologists was probably not in the minds of the framers of our Constitution; they must be supposed to have used the word in its ordinary and popular signification, as representing something that can be owned and possessed and taken from one and transferred to another."[13] As a definition of property for the purposes of the code, civil or criminal, little if

[12] C. F. Bastable, *Public Finance*, p. 262.

[13] *Story* v. *N. Y. Elevated Ry. Co.*, N. Y. Court of Appeals, Sickels, 90 N. Y. 187.

any objection could be taken to this, but as an economic, and especially a fiscal definition, it does not sufficiently reduce "the broad meaning sometimes given to the word by law writers." The word, property, has come to be used in several senses and is particularly one of those words the meaning of which, in the words of Mr. Bastable, turns on different conceptions of the same facts. Firstly, the court definition given above would be true if "the things which can be owned and possessed and taken" were the same today as when the constitution was framed. But they are not the same, and therefore we may safely say that the framers of the constitution if performing their work today would have an idea of property as it exists at present which obviously, by the same showing, would not agree with the conception in the mind of the judge. Secondly, property for the purposes of taxation has come to mean more and more, in spite of all legislation to the contrary, the capitalized value of the income which it will produce. The law has not kept pace with the facts of daily life.[14]

[14] The word property is in such extensive use that a clear concept of its significance is of vital importance for all purposes. Although not commonly recognized, the word is used in three distinct ways, and probably in all of those ways, repeatedly, by the same individual in a single day. Eventually perhaps two of the meanings may become detached and represented by fresh words, but at present there is no sign of a movement in that direction. We are therefore driven to the expedient of drawing attention to the sense in which the word is being used on any particular occasion if we desire to prevent misapprehension. The first use is that set out so explicitly in the judgment quoted above. The second is the narrower use of the word for fiscal purposes. The third use occurs when the two great classes of propertied and propertyless are under discussion.

As between two litigants the first definition holds, namely, "something that can be owned and possessed and taken from one and transferred to another." When taxation is the subject it is necessary to adopt a fresh conception and to keep firm hold of it. Property then signifies the capitalized value of the income which the possession will yield. The same possession may under one set of circumstances be property, and under another wealth. The distinction between property and wealth has no importance for the propertyless when engaged in ordinary conversation, but it is of vital importance on those rare occasions when the propertyless come to consider their relations to the propertied. It is also of vital importance in questions of taxation. In the latter connection a picture is wealth when open to gratuitous inspection; it becomes property when a charge is made for viewing it. This single illustration completely exemplifies the principle involved, but endless other instances will readily present themselves when once the principle is grasped. (Some persons might jump at the conclusion that this aspect of property is synonymous with capital, but a little reflection will make the distinction clear. Property as here conceived may include capital as one of its forms. The true conception of capital is property

Professor Cairnes draws attention to another term constantly used in a misleading sense. "It is common to hear any proposal which is thought to involve an undue extension of the power of the state branded as socialistic whatever be the object it may seek to accomplish. People are so greatly governed by words that I cannot but regret that a philosophy of social life with which I so deeply sympathize should be prejudiced by verbal associations fitted, as it seems to me, only to mislead."[15]

After the fashion of immature physicians who attempt to cover a doubtful diagnosis by a strange and highly technical description, some people give undue weight to their cause by the unctuous use of the word "confiscation." It is a word that never fails, at least partially, to discredit an opponent's case, and therefore finds still greater favor with politicians when they wish to discredit any scheme of taxation that cuts into the privileged gains of their moneyed supporters. It is well, therefore, to recognize now, once for all, that all taxation is confiscation, the root of the word being the same as that of "fiscal." If, as some would hold, legitimate taxation consists in taking a portion and confiscation in taking the whole, then to take ninety-

utilized not merely to produce an income, but with the purpose of appropriating surplus value.)

If the question be one of larceny the distinction between wealth and property is immaterial, but when the question is one of taxation the distinction is all important.

Until intangible capital came to occupy so large a position in daily life, the words "a person of property" meant an owner of real estate, "*un rentiér*" as the French aptly put it. It still means this to the peasant class—a class which in these matters must include all those who have not risen to intellectual life. Now, however, to those who think, the *rentiér* and the person of property have come to mean a person having the control of the labor value of others without the necessity of rendering any service personally, essentially such an individual as is contemplated by Professor Veblen in his *Theory of the Leisure Class*. Used in this sense property comes to mean the capitalized value of the power—however acquired—of appropriating to one's personal use the value produced by the exertions of others, without any legal obligation to render any personal service in return.

In the absence of the creation of adequate terminology to express these three aspects of the same word, it is essential to be perpetually on guard against the different conceptions here set forth. Almost invariably any public discussion of matters of taxation gets confused by the importation into it of the first or last conception of the word, property. Practised speakers know exactly when and where this confusion can be successfully introduced, and at times even they may be acting quite honestly through simply being more concerned with dialectics than clear conceptions.

[15] J. E. Cairnes, *Political Economy*, p. 266.

nine cents on the dollar would not be confiscation. If it would, then by a process of elimination one must inevitably come to a point where a difference of a cent, or a fraction of a cent, divides taxation from confiscation. There is no escape whatever from this conclusion.[16] The same reasoning applies to interest and usury. All interest is usury. The distinction was only invented for the convenience of those who had difficulty in reconciling their religious professions with the sources of their income. One person will define five per cent as interest and six per cent as usury, while more than one judge has given judgment for far higher percentages as "reasonable interest" within that well known proviso of the law "having regard to all the circumstances."

The advance toward coördination would be much facilitated by the wide acceptance of exact definitions arrived at after careful consideration of existing ambiguities. The safe course is to discourage the use of terms, intended to be opprobrious in certain circumstances, for the purpose of discrediting a position that is unassailable by reason. Ambiguous words are an encumbrance to the vocabulary of the science of taxation, whatever ethical significance may remain to them.

4. *Taxation in General.*—The general idea which constitutes the basis of the system of state or local taxation mainly recognized in the United States and designated as "the general property tax" is founded on the assumption that in order to tax equitably it is necessary to tax everything, the term "everything" being at the same time used in a sense so indefinite as to embrace not merely things in the nature of physical actualities other than persons, but also "persons, incomes, rights, things representative of property, titles, trusts, conclusions of law, debts, and in short any act of assessing capable of resulting in the obtaining of revenue. As a logical consequence of this idea,

[16] Was anyone ever able to say what constituted a large pile of sand and what a small pile? If you show two dissimilar piles of sand to anyone, he will at once recognize that one is larger than the other and will speak of one as the large pile and the other as the small pile. It is, however, purely a matter of relativity, otherwise the difference of a single grain of sand, whatever the size of the piles compared, could be shown by a process of elimination to constitute the absolute difference between a large pile and a small pile.

the exemption of anything from taxation is held to be not only impolitic but unjust, and if made necessary by circumstances, as something to be regretted.''[17]

The idea that in order to tax equitably it is necessary to assess everything capable of resulting in the obtaining of revenue, is not original with the American people. Its inception dates back to the dawn of civilization. In the early stages of society there was no important form of property other than landed property and the instrumentalities, including slaves, for its cultivation, and so far as the system of obtaining revenue merited the name of taxation, it corresponded to the modern conception of a ''land tax.'' Although the general property tax may in one sense be regarded as evolved from this ancient tax it is questionable whether the process can be regarded as strictly an economic evolution. Quite other factors enter into the process. In the first place this evolution takes place in relation to the particular country or state, and not relatively to the chronological position in human development which the pioneers of the state occupy. Thus the position of the early settlers of this country was in most respects the same as that of a nation in the nebulous stage; of Italy just prior to the formation of the Roman Republic, or of Asiatic tribes just prior to their subordination to a central government. The patriarchal institutions of Asia are paralleled by the parochial ideas of the New Englanders. The idea of taxing everything in order to tax equitably is the natural sequence of thought when the untrained mind is first brought to consider the need for taxation. It results from a rude groping after equity. Obviously the later in history the process takes place, the more rapid the sequence of the stages. What once took a thousand years is passed through in a hundred years in the later era; yet the processes, though shortened, still succeed one another in the same order.

Looking back across the ages one sees the primitive tax-gatherer arrive, supported by an armed band (the nature of which has scarcely changed through all intervening time until we recognize it as the sheriff's posse today). The officer, com-

[17] Wells, *op. cit.*, p. 292.

bining in himself the duties of assessor and collector, rapidly casts his eye over the visible signs of wealth and formulates his demand at a rate calculated to meet the requirements of the revenue he has been instructed to obtain, plus an adequate charge for the expenses of collection including his own liberal remuneration. The assembled people are not slow to recognize that the wider the net can be spread the less will be the individual share, whilst there are not wanting informers who will reveal the hidden hoard of a neighbor in hope of a reward involving exemption of their own property. This is precisely the psychological effect aimed at by the officer. He is fully aware that, left to his own resources, his work would be far more difficult than the taxpayers suppose, and he calculates that, from the selfish motive of diminishing their own contribution, they will suggest to him openly the forms of property that escape his eye. In this view he is rarely mistaken. That the essential condition of ruling other men is to divide their counsels, was learned by the first man capable of bringing a tribe under military discipline, and the lesson has ever since been improved upon, never forgotten. The wise officer therefore merely sits still at the place appointed and the collection is satisfactorily made in a very few days. The loss in rewards to informers is far more than made good by the result of the information obtained, and the general information openly offered is discreetly applied at the next village and gradually improved upon until after many generations the exhaustive taxation of the days preceding the first French Revolution is attained; the days when nothing escaped; the days that must inevitably follow upon the unchecked development of this theory of taxation (whether applied to direct or indirect imposts) in whatever country it is adopted and nurtured.

This process of increasing the number of taxable objects has occurred in every community, the only difference being that the later in history the community has been founded the more rapid the development. Starting thus among the first colonists in this country it has developed in each century as far as it developed in a much longer period of time in earlier state formation. That

its final cataclysm may be avoided will be due less to the merit of any organization than to the work of the scientific investigators of the last hundred years. "When the intellectual history of this time comes to be written, nothing will stand out more strikingly than the empty gulf in quality between the superb and richly fruitful investigations that are going on, and the general thought of other educated sections of the community. Not that the scientific men are as a whole a class of super-men, dealing with and thinking about everything in a way altogether better than the common run of humanity, but that in their own field, they think and work with an intensity, an integrity, a breadth, boldness, patience, thoroughness and faithfulness that puts their work out of all comparison with any other human activity."[18]

[18] H. G. Wells, *Marriage* (New York, Duffield, 1912), p. 251.

CHAPTER II

MAJOR AND MINOR TAXES

1. *The major taxes, their origin and antiquity.*—The same psychic force from which springs the tendency to concentration of business in trusts, mergers and other gigantic combinations[19] operates to produce a like effect in the field of fiscal resources. Originally the state in the person of the monarch owned every element of property,[20] and taxation was almost single. As the individualistic stage was approached the number of taxes increased. It is therefore not unreasonable to expect that, with the passing of the individualistic age in business and the return to monopoly, there will be manifested a tendency to return to similar primitive conditions in taxation. In accordance with this expectation modern maxims of taxation include such enunciations as the following: "Taxation for the purposes of revenue should rest on a broad basis formed by a few orders of highly general phenomena. These orders of phenomena should be stable and hence should include monopolized goods, the stablest orders of industrial phenomena."[21] "A given amount of revenue is as a rule more conveniently raised from a small number of very productive taxes than from a larger number with smaller returns per unit."[22] When one's mind is cleared of all the

[19] "We have at present more than four thousand monopolies to say nothing of price- and rate-fixing and profit-sharing pools with buying and selling agencies, exercising functions similar to those of the trusts all organized for fixing prices arbitrarily. . . . In most cases neither the purpose nor the power is denied; on the contrary they are proclaimed for the object of raising the price of corporate securities. . . . Every day brings its report of some new and gigantic alliance, the future of which cannot be predicted since most of these corporations are authorized to buy up the stock of any other corporation so that they may at any time acquire supreme control over industries extremely remote from those ostensibly in view when they were first created."—Rose, *op. cit.*, p. 232.

[20] Cf. *Historical Researches*, by A. H. L. Heerens, I, 130, and the introductory chapter on Asia; also *Five Great Monarchies*, by George Rawlinson, III, chapter 7.

[21] E. A. Ross, "A New Canon of Taxation," *Pol. Sci. Quar.*, VII, (1892), p. 4.

[22] J. S. Nicholson, *Principles of Political Economy* (London, Macmillan, 1893–1901), III, 287.

verbiage of obsolete fiscal lore and one examines the essence of things, it will be found that approximately every taxable faculty, the yield from which will justify the expense and irritation of collection, will range itself under some half dozen heads or less. The ability nearly to approach fiscal justice by so few and easily recognized sources of taxation at once makes the way clear for a system of coördination by eliminating a mass of material that becomes useless in the face of simple principles capable of the widest application.

Five great sources of taxation readily suggest themselves. In contradistinction to the innumerable sources of petty revenue, these five sources may be characterized as major sources. It will be found that at one time or other they have been almost single taxes or have been seriously considered as sufficiently productive to be urged for adoption as single taxes. In all ages there have been earnest students and statesmen who have thought they recognized in some form of taxation a single source, the pressure on which would be equitably diffused throughout the whole community. Logically their case has been perfect, but in practice the conditions that formed the major premise have not been found to exist simultaneously. It is not sufficient that conditions should exist when the basis is a period of years; they must exist, at most, within a single year if the tax is to be annual, or injustice will be worked.[23]

Of two schools of taxation, starting from the same point, one reasons that if four or five sources of taxation meet the demands

[23] The idea here sought to be conveyed may be gathered from an illustration in the realm of stock speculation. A stock is bought at a low figure; its price rises and falls again rapidly several times. During these transitions certain speculators contrive to sell at the high price and rebuy on the fall, netting a profit on the aggregate of such transactions let us say of fifty points. Meanwhile at the end of two years or more an individual who bought at the original figure and held on, finds that his holding has appreciated three points. A tax on the profits of speculation is perfectly equitable. If taken over the whole period in question it would reveal a gain of three points taxable, but such a tax would obviously fail to reach the faculty of the intermediate speculators most of whose transactions would not be recorded anywhere except in brokers' ledgers, as such transactions can easily be carried out with borrowed stock on an open transfer which is never presented for registration. It would be necessary to reach them, if at all, by some other method, or while the unearned increment of the genuine holder was taxed the larger accidental income would escape.

of equity better than a single source, then forty or fifty sources will still more nearly approach the desired goal and thus they arrive at the idea of taxing everything. The other reasons that if four or five sources are better than so many, surely a single source can be found to meet all requirements. The reasoning in both cases is as accurate as the reasoning in a problem in mechanics where the coefficient of friction is omitted.

Taken in a general way, chronologically, the five sources above referred to will be found to correspond to what we now denominate as Income, Capital, Franchise, Inheritance, and Consumption. These will now each be considered separately, not of course in detailed analysis, but only so far as may be necessary for the immediate purpose in view.

2. *Income.*—The earliest taxation of which any records exist was on the gross produce of land, a fifth, an eighth, a tenth, or some other fixed proportion of the produce. As private ownership of land—or rather proprietorship, as distinguished from possession—came into existence, on the disintegration of central authority, this tax survived in the metayer system of cultivation; but it is in this earliest form of taxation alone that we can find the germ of the income tax. Such confusion as exists on this point, arises from the fact that the tax related to land and from that incident has arisen the nomenclature of a land tax. This earliest tax, however, was essentially an income tax. The real nature of the advantages accruing to the monopoly of land had not appeared at that stage of civilization, and later ideas of land taxation were not involved in the primitive conception. The reference to land was incidental to the circumstance that income was only associated with land at that period. The tax was levied on the amount of a person's receipts; it was immaterial whether they were derived from hunting, gathering wild fruits, grazing cattle, or the cultivation of the soil, the source of the tax was the results accruing to those efforts. "The land and its people" was a common expression, the word land being indicative rather of area than of the actual soil.

It is characteristic of everything in the form of legislation that it tends after a period of years to operate in a way not con-

sidered at the inception of the enactment, and this circumstance is peculiarly observable in the matter of taxation. An excellent tax, after a period of years, gradually gets merged into some private right; by continual twisting of the phraseology, regardless of the germ idea, a new meaning displaces the old one and a new name appears. But the germ idea, if based on equitable principles, never dies, and presently someone rediscovers it and offers it to a new generation under another name. It finds favor and is adopted, going into operation alongside of the ghost of its former self, by that time reincarnated in some private privilege, and so disguised by legal verbiage as to be unrecognizable to any but the student of history. Thus the income tax of today, in all its modern refinements of exemptions, abatements, and progression, is but the resurrected original tax adapted to present conditions.

3. *Capital value.*—Many centuries passed before the idea of faculty began to take root. Then the ease with which some individuals procured the necessaries of life drew attention to the fact that certain sites conferred special advantages,[24] and thus site value and fertility attracted the attention of the fiscal administrator. While the inception of the other major taxes is not definitely marked in history, the transition from income to capital faculty is indicated by at least one date.

It was in Asia, where ethical systems "interpreted authoritatively by a priesthood or a learned class, were at once the religion and the civil constitution of the state,[25] that an administrator, selected from the race famed in all ages for fiscal ability, provided the first recorded instance of a scientific attempt to tax economic rent by means of an assessment which nearly approached the idea of the advocates of a single tax on land values. When Daniel the Hebrew was chief fiscal officer of Darius[26]

[24] Early populations were roughly divided into those who paid taxes and those who lived on the proceeds of taxation. It would of course be quite obvious at any time that those who lived on the proceeds of taxation lived more easily, but what is referred to above is a distinction between individuals of the taxpaying class. As a rule, the governing class was exempt from taxation, and to suggest the contrary was treason.

[25] J. W. Burgess, *The Reconciliation of Government with Liberty* (New York, Scribner, 1915), p. 26.

[26] Book of Daniel, chap. 6. 2.

(516 B. C.), "A regular land tax was assessed not only according to the amount under cultivation in each province measured in parasangs but according to the fertility of the ground, hitherto the patriarchal custom having prevailed of sending a yearly tribute to the Court which took no account of the capacity (or value) of the land."[27] The record makes it clear that the peculiarity of the tax lay in taking account of the capacity or capital value of the holding, the assessment being made, not according to the use to which the land was put nor according to the produce, but according to the best use to which it was capable of being put, a perfection of assessment rarely attained since, although aimed at in the constitution of at least one state of the American union.[28] A modern writer has accentuated the principle. "Ability is determined not by actual income but by the capacity, or faculty, to produce income, not by realized but by realizable income."[29]

4. *Franchises.*—It was apparently several hundred years later when what have since come to be known as franchises first

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[27] "Diese wurde nach Vermessung der Culturflächen jeder Provinz nach Farsangen und nach Taxirung der Fruchtbarkeit des Bodens festgesetzt, während bisher die patriarchalische Sitte bestand dem königlichen Hof einem jährlichen Tribut zu senden, der sich der Berechnung seines Werthes entzog."—Ferdinand Justi, *Geschichte des Alten Persiens*, (Berlin, Grote, 1879), p. 59.

Note. Dr. Anthon refers to farsang as the ancient form and parasang as the modern equivalent. Harper's *Dictionary of Classical Literature* gives farsang as modern Persian. Herodotus and other classical writers agree that as a measure of length a parasang was about three miles, which would range it approximately with the league and "stunde," suggesting that a common standard of distance was what could be covered in one hour on foot. In Persian heroic legend a feat in archery is recorded as a bowshot of a parasang, from which it is possible that a square of land with the base of a bowshot came to be recognized as a measurement of area and presently, like the hide and the plough, acquired a definite meaning under the term parasang. On the other hand (though less likely where intensive culture was usual) such a measurement as a square league might have been used in an empire where the vast monetary units of a talent or lakh (nearly $33,000) appertained to the acts of the sovereign. The point is interesting but of no practical importance in the present connection.

[28] "Land and the improvements thereon, shall be separately assessed. Cultivated and uncultivated land of the same quality, and similarly situated shall be assessed at the same value."—*Constitution of California*, Art. XIII, sec. 2.

Note. Whether an owner chooses to raise a crop of vegetables or a crop of apartments should be immaterial so far as the assessment is concerned.

[29] F. A. Walker, "The Bases of Taxation," *Pol. Sci. Quar.*, III (1888), p. 14.

attracted attention as subjects for taxation, taking tangible shape in the historic "royalties" and the Roman monopolies. Circumstances would arise pointing to the pecuniary advantages accruing to a person's social position or business location. Fable and anecdotal history afford an index to the dates of institutions not otherwise ascertainable, and in the somewhat later period now in view such indices are not wanting. Stories were current of sovereigns being astonished at the wealth of certain of their subjects and forthwith instituting inquiry as to the source of the exceptional prosperity. (A case of the fiscal expert on the track of concealed faculty!) The result was usually to reveal the profits of office in the form of tax farming or the possession of a "coign of vantage" from which a private *octroi* could be levied on caravans and other traders. The consequence of the discovery was either confiscation or license. In the latter is found the germ of the franchise, the granting of an exclusive privilege on condition of a contribution to the revenue of the state.[30]

While the germ of the method of assessment involved in the modern general property tax is to be found in the idea previously set forth under the heading of "capital value," it is to the comparatively modern substitution of proprietorship of the soil for secure possession (the latter being all that is necessary for industry), that we must look for the origin of the general property tax so far as it is a tax on real estate. The general property tax on real estate is in essence a franchise tax for the privilege of proprietorship, a privilege which confers advantages beyond those which accrue to needful possession; for proprietorship of the soil is a delegated attribute of sovereignty.[31] That this double quality inherent in the union of proprietorship with possession, has not been overlooked is recognized in the statement

[30] The raids of the Kurdish tribesmen which persist to this day, are relics of a far older institution. It is only when such acts come to be superseded by regular distraint or a fixed tariff that they deserve fiscal recognition as franchises, to be taken over or licensed by an organized government.

[31] "The mere fact that private property in land may be called a special privilege raises the importance of the concurrent public interest."—C. H. Swan, "Impersonal Taxation," *Publ. Amer. Acad. Pol. and Soc. Sci.*, xxx Supplement 1907, p. 66.

that if an owner of real estate is in fairness bound to pay for the advantage accruing to his property through the expenditures of the commune or state, this object cannot be attained by means of the same tax which the same real estate owner is called on to pay toward the support of the public schools and of the poor, in proportion to his personal ability to pay taxes.[32] Step by step, from this primitive development of the idea of the value of a privilege for the purposes of taxation, has emerged the elaborate legal machinery by which all modern franchises are (and presently all quasi-franchises will be) made to contribute to state or federal revenue.

5. *Estate and Inheritance.*—In the writings of different economists will be found set forth various grounds for the taxation of the estates of deceased persons and of inheritances. The term inheritance tax implies that it is levied on what has already passed, whereas the germ idea is that of a "death duty" or an estate duty, the levy being on property which has been abandoned but is held by the state pending the consideration of any claims to it which may be put forward.

To insure accuracy of vision with regard to the germ idea of this source of revenue, one must look for its inception in the period when ecclesiastical and civil laws were of equal efficiency. The original idea was undoubtedly that of an estate or death duty. The conception of a tax to be paid by heirs arose in the days of paramount modern individualism. The state had severed its connection with the church administratively and the old sources of revenue had been lost sight of; thus it happens that there now exist everywhere outside the United States both inheritance and estate duties, the former having the earlier place on the modern statute book. The germ of the original idea gave birth to a feeling that here was an overlooked source of revenue, and owing to the disregard of all research extending into the pre-individualistic period, the idea of an inheritance

[32] "Wenn der Grundstücksbesitzer die Vortheile zu entgelten hat, welche seinem Grundstücke die Aufwendungen des Gemeindeverbandes oder des Staats zuführen, so kann das nicht durch dieselbe Steuer geschehen, welche derselbe Grundbesitzer zu zahlen hat für den Unterhalt der Schule und der Armen nach Maassgabe seiner persönlichen Steuerkraft."—Cohn, *op. cit.*, II, 253.

tax was evolved and with it the idea of a tax payable by heirs and legatees. The absurd insufficiency of the results led to the revival of the idea of the estate duty which has been superimposed on, instead of substituted for, the inheritance tax in Europe, but is yet awaiting revival in this country as a most fertile source of revenue. At the moment of death a person loses all control over his or her possessions, and loses it forever.[33] At that moment the state takes control by sovereign reversion. But the function was exercised more drastically under the ecclesiastical law.

To appreciate accurately the inception of this idea and to disentangle it from the idea of a tax payable by heirs, one must for the moment disassociate the process from any conception of continuity of possession; one must conceive a state of affairs in which it should happen that a whole generation departed simultaneously, leaving the next generation as members of a single family to deal with accumulated property unfettered by any disposition suggested by those who had been its previous owners. The property would then all be temporarily without owners. There would be much more than sufficient—the assumption being the aggregate accumulations of a generation—to supply the needs of the new generation and the natural conclusion of reasonable beings would be to put the surplus into a common fund to meet the very demands which now confront a state. Although the equivalent numbers of a generation depart every thirty-odd years, those who actually go, are not by any means all of the same generation; they may belong to as many as five generations. The result is that it is difficult to realize the idea which is the germ of the tax without diassociating it from everyday phenomena. It would not, however, be difficult to give instances of the occurrence of conditions almost identical with those just pictured if the life of a corporation be taken instead of the life of a state.[34]

[33] "This night thy soul shall be required of thee: then whose shall those things be, which thou hast provided?"—Luke, chap. 12. 20.

[34] The writer was once a member of an association that offered no property interest to those who joined it. No one realized that there was any property interest until one day an accumulated balance of nearly five hundred thousand dollars was discovered. There were several thousand

Support is given to the views above set forth by the Common Law of England, which prevails in this country in default of other evidence. Under that law freeholds were alienable only by formal delivery of possession thereof in the tenant's lifetime,[35] and this would indicate with sufficient accuracy the prevailing ideas in other parts of Europe at that time. It was an age when the Church was closely bound up with the State everywhere. A knowledge of the incidents of land tenure would at once lead to the deduction that this "delivery" would be subject to some supervision, probably analogous to the need for sanction when the holder of a public office is conditionally allowed to appoint a deputy. The prevalence of such a custom supports the view that control was regarded as terminating at death, a view still further fortified by the doctrine of escheat.

6. *Consumption.*—Taxes on consumption, as major sources of revenue, are now almost entirely represented by customs and excise duties. At first sight these would appear to have a very ancient origin. A closer examination, however, will disclose a lack of connection with the primitive forms of enterprise that naturally come to mind. By way of the development of the process of tax farming (which will be treated of later on) there is, in one aspect, a close connection between certain modern phenomena and the levy of tribal tribute and the holding up of caravans. But as a state enterprise regularly organized, the inception of customs and excise would appear to belong to the Middle Ages. As their earlier prototypes were the work of those who eventually became the holders of real estate, so customs and excise arose out of the efforts of this same class to lighten their own fiscal burdens by shifting them secretly onto the consumers. "Imposts are the cheap and right taxation; but through the dislike of people to pay out a direct tax, governments are forced to

members and the association was not organized for profit. It was in many respects a miniature state. No individual could claim the money. Those responsible for its accumulation were dead. A court decided that it was the property of this miniature state as a whole and must be disposed of according to the will of the members present. These decided to put the whole into a common fund for mutual benefit; and that was done.

[35] Glanville VII, 15. (A law treatise of the time of Henry II, latter half of twelfth century, attributed to Glanville.)

render life costly by making them pay twice as much, hidden in the price of tea and sugar.''[36]

In older countries the tendency is to eliminate customs duties numerically while retaining for revenue purposes duties on articles of which the consumption is large and necessary, and which cannot be produced so cheaply if at all in the home country. In a country like ours where everything can be produced and, eventually, will be produced as cheaply as elsewhere, the tendency will be for customs duties to diminish to an amount simply equal to what is required for the expenses of the staff. For other prudential reasons it will be necessary, always and everywhere, to retain the services of an inspecting staff at a port of entry, and the fairest way to provide for its remuneration would probably be by the equivalent of fees. Thus we may expect taxes on consumption to be eventually limited to excise, and therefore to this side of the source attention should be directed. ''Everything which raises the exchangeable value of commodities of any kind, which are in general demand, tends to discourage both cultivation and production,''[37] is a maxim that should always be in mind. But the unlikelihood of any immediate elimination of excise from the major sources of taxation will necessitate the adaptation of its principles to manifestations of faculty that have not yet been successfully exploited. There are items of what might be termed ''accidental income'' which under present arrangements almost entirely escape taxation and yet form vast accumulations in certain hands. It should not be beyond the capacity of the fiscal administrator to devise means for reaching these sources, most of which would be classed by the judiciary as excisable.

7. *The minor taxes.*—Under the term, minor taxes, it is intended to include all those taxes which are generally avoidable by a change in vocation or in methods of business, and which consequently are of limited yield because too great an increase in the rate of levy would extinguish the source. No such quality attaches to the taxes classed as major taxes which could only fail

[36] R. W. Emerson, *American Civilization*, N. Y., Houghton, 1903.

[37] D. Ricardo, *Political Economy and Taxation*, chap. 12.

to yield with the downfall of the state. The minor taxes are very numerous and, although individually affording small revenue, yet in the aggregate provide a considerable amount. Their incidence is felt in trade of all sorts, and for this reason any change in rate costs the community more loss in irritation and disarrangement of methods than can by any means be compensated by the possible increased yield. These are particularly the taxes to which the remark applies that "Every tax becomes good, provided it lasts long enough."[38] They are taxes to which one may become accustomed by use and adjustment in a term of years. New industries may spring up affording new opportunities for increasing the number of such taxes, but only in that way and occasionally by expansion of business can an increased yield be anticipated. The population may increase and so the number of contributors may grow, but such taxes have no elasticity in the sense in which that quality is attributed to the major taxes. An increase in the yield may come through growth of business where, as in the case of an auctioneer, the base is on the number of sales, or a theater on the number of performances, but they must have no *ad valorem* incidence or they cease to be minor taxes and trespass on the upper field. A market toll on cattle at so much per head is a minor tax but assessed on the value of the beasts becomes an income or property tax.

Many of the business license taxes of the southern states are substitutes for the general property tax and in the coming day when that discredited tax is wholly abandoned as regards personal property,[39] such business taxes may be revised. They differ, however, in the important respect of not being *ad valorem* and so may retain their place equally in substitution for the successor of the general property tax. It is, however, highly desirable to have uniformity in all minor taxes, at least as re-

[38] N. F. Canard, *Principes d'économie politique* (Paris, Buisson, 1801), p. 198.

[39] With an approach to unanimity that is rarely attained in such important matters of governmental policy, academic investigators, tax commissioners, and others charged with the administration of the system, have condemned the general property tax as unjust and, as far as administration in accordance with the intent of the law is concerned, impracticable.—V. Custis, "Scientific and Unscientific Taxation," Bull. Univ. Washington, no. 84, August, 1914, p. 15.

gards groups of states where similar customs and methods of business prevail.

As the conviction dawns upon people that there is something better to live for than the attempt to accumulate wealth beyond one's physical or mental needs, the tendency will be, as in older countries, to charge the municipality or the state with the duty of providing comforts that have grown to be legitimate needs, at a minimum cost.[40] The psychological effect of the consciousness that the profits are reduced to a minimum, and that what there are become common property, creates a custom of taking advantage of the accommodation at every opportunity with the result that revenue becomes unavoidable.[41] Every effort should be made to assimilate the procedures of different authorities in like undertakings. Central European states give the widest publicity to requirements in tolls and taxes. A schedule of taxes affecting business men would be of material assistance if prominently exhibited in the nearest railway station, or the nearest junction passed in approaching a boundary, or on the side of a house on or near the boundary where approached by road. It would also avoid much annoyance and waste of time, and by making people familiar with the variations would produce many unexpected suggestions in the direction of coördination. The custom of conspicuously exhibiting information of this nature in Europe enables travelers to acquire information which saves them and the local officials much trouble. It renders business and travel freer from friction and inconvenience than where everything is guesswork and surprise, and it engenders a species of confidence between the authorities and the public, resulting in that sense of welcome which is usually only experienced after repeated visits free from untoward events.

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[40] "The public cannot be subjected to unreasonable rates in order simply that stockholders may earn dividends."—*Covington and Lexington R. R. Co.* v. *Sandford,* 164 U. S. 578.

[41] There are municipal authorities which raise a considerable revenue from the letting of chairs on sea fronts and in parks and other places where people take pleasure in lounging, at a fee of two cents for two hours or less. There are other reasons that make the control desirable. The revenue from such sources enables the authority to provide seating accommodation at roadsides and elsewhere gratuitously. The instance given is but one of many that might be quoted.

CHAPTER III

LIMITATIONS OF JURISDICTIONS

1. *State boundaries.*—When the boundary of two states is definitely marked by the levy of customs duties, one is naturally prepared, in passing from one state to the other, for fresh fiscal conditions. In such a case all one's faculties are alert to changes of environment; but when, as in this country, absolute free trade exists between the different states, persons are apt to give no further thought to their locality than noting the postal address. It is therefore a rude awakening when the fact that one has passed into another state is suddenly brought home by encountering some fiscal law quite foreign to the conceptions in which one has been reared. The infrequency of the shock is due solely to the laxity of administration. The ordinary American traveler and business man relies upon the absence of enforcement of the inconvenient provisions and thus acquires a habit of indifference, but the conscientious investor is in a perpetual round of tribulation which is only made public when some individual with high ideas of the "immunities of free citizens"[42] voices his sense of injustice. Then it is that we suddenly realize the inconsistency of the perfect free trade of the United States with the existence of differing legal restrictions on that trade. For a century the law courts have enjoyed an intellectual orgy in reconciling or enforcing the discrepancies which arise, between the laws of different states, between these laws and the constitutions of the states concerned, between both of these and the federal constitution and, occasionally, the Declaration of Rights. The most delightful legal refinements have rejoiced the heart of the jurist as first one party and then the other has been discomfited, the wonder of the audience growing like that of the amazed rustics ranged round the schoolmaster of Goldsmith's *Deserted Village.*

[42] Articles of Confederation of the United States of America, 1781–1788, Art. IV.

2. *Divided jurisdiction.*—Much of the confusion existing in the field of taxation in this country arises from the existence of our many separate governments, each with its own code of tax laws. "Jurisdiction is ill defined. Nearly every state is anxious to bring the greatest possible number of subjects and the greatest possible amount of property under its taxing jurisdiction. So great has been the pressure in this direction that legislatures have too frequently neglected to observe the ordinary rules of equity and fair play, and the courts have too often given judicial sanction to methods of taxation which are not economically justified under our present system of industrial and fiscal organization."[43]

The constitutions of western states have been copied from those of New England and of the southern states. Even the framers of the first constitution of California, it has been said, did not pretend to originate a constitution but carefully compared those of the several states with whose workings they were familiar and borrowed from each.[44] Thus the interpretations of all the constitutions as regards the general property tax have been always influenced by the primitive conceptions which favored the perpetual expansion of the term property. In contradistinction to "thinking in terms of empires" as attributed to the late Cecil Rhodes (a mode of thought which under some circumstances may be carried too far), we have cultivated the parochiality of the majority of the electors.

3. *Development of ideas of taxation.*—Only as a community attains to maturity does an economic interpretation begin to take its place in the thought of the people. Prior to the nineteenth century scarcely any thought was given to the discovery of the methods of accumulation which place wealth in a position where faculty can be identified as opposed to mere manifestations of possessions. "It is only of late years, when the burdens of taxation are increasing by reason of the great expense of govern-

[43] Report of the Committee on Double Taxation and Situs for the Purposes of Taxation, Proc. Nat. Tax Assoc., 1914, p. 233.

[44] H. H. Bancroft, *Political History of California* (San Francisco, The Bancroft History Co., 1888), VI, 290.

ment, that the objects and modes of taxation have become a matter of special scrutiny."[45]

"The picture of the members of a community conferring to discover the best known plan of taxation and taking immediate steps to put it into practice, does not fit in the frame of actual communities in being. In a confused and untidy way the thing does take place, but the first process of discovery is never complete and decisive, much less unanimous, at the time when steps begin to be taken for the second process, that of working out the findings into practice. There are always sincere challengings of the findings, always the objections (sincere in another sense) of those whose interests seem threatened. Most troublesome of all, these two are confused, the more so as it is to the interest of the latter class of objectors to assume the protective coloring of the former. Thus whenever we come to consider the definite act of translating any principle of taxation into terms of actuality, we need to have before us the community as it exists in fact, with its knowledge and ignorance, its beliefs, its customs, its codes of conduct, its deeper and its shallower ruts and grooves of daily thought and action, its machinery of social life, its conscious past, its conscious and sub-conscious present. With this material, not only legislators and politicians must work, but effective economists also. We see the community imposing taxes, and the individual suffering them, or as the individual taxpayer often puts it, suffering from them."[46]

4. *Sumptuary taxes.*—Taxes on vicarious evidences of wealth have always been a favorite idea with a certain type of mind. They embody suggestions that are sure of support from the ignorant of the propertyless class and such persons as can only

[45] *Fairbank* v. *United States*, 181 U. S. 312.

[46] Robert Jones, *Nature and Principles of Taxation*, p. 212.

Note. Few better illustrations could be found of the confusion above alluded to, than the naïve appeal of an assessor of taxes for reëlection on the ground of being supported by the real estate board and other voluntary associations brought into existence for the concealed purpose of holding up the price of vacant land and procuring its underassessment. The ignorance or indifference of the ordinary taxpayer with regard to the real object of such associations is the explanation of their support being advanced as a claim to the suffrages of the electors. It is indeed a case of "assuming the protective coloring" of the genuinely sincere in the public interest, by those only sincere in their own interest.

recognize wealth in display. Additional weight is frequently given to the proposals by reason of their emanation from rich individuals with the most honest, disinterested, and patriotic intentions, themselves particularly vulnerable to such an assessment. The fact is overlooked that people of the Hetty Green class, people with huge faculty and small needs, entirely escape such taxation, and they are the very people most worthy of attention. "It often happens that a man of considerable eminence in his own profession, but without the smallest acquaintance with the fundamentals of economics, will make a suggestion which is precisely on a level with the proposition that a locomotive would be much more efficient if its weight were taken off the driving wheels so that they could revolve more easily." Two eminent lawyers have recently proposed that individuals should be taxed according to their annual expenditure for personal comfort, and on their private collections of paintings, jewelry, and bric-a-brac,[47] and, "as usual, the editor of an important magazine accepts with joy the contribution in which the idea is developed, and the public feebly thinks there may be something in it."[48]

The initial difficulty of valuing such collections would almost be sufficient to condemn the proposition, for a valuation for taxation presupposes that the property if sold would realize the price set upon it. It is precisely when expenditure for such purposes is at its lowest ebb that these proposals are made. It is when the ordinary sources of revenue show signs of exhaustion and fresh sources are being sought, that people lose sight of the elementary principles of taxation, forgetting that artistic collections derive their pecuniary value from conditions which at that moment are peculiarly absent. "The market taken as a whole constitutes a social institution in much the same sense as does the church or the state, . . . The progress of market valuation as a rule, is a translation into pecuniary terms of values which have already become, in some measure, a social institution."[49] An-

[47] Victor Morawetz of New York and Sir Edward Clarke of London, in speeches made in November, 1915.

[48] Edwin Cannan, *Wealth*, p. vi.

[49] C. H. Cooley, "Progress of Pecuniary Valuation," *Quar. Jour. Econ.*, pp. 1–2, November, 1915.

other point overlooked in all such suggestions is that artistic collections do not fulfill the important requirement that property to be taxable should have an income-producing quality which can be capitalized. Artistic collections made for art's sake lack this quality. If they are used for exhibition with a view to gain they at once cease to be artistic collections per se, and become stock in trade. On close examination they will be found to fulfil the conditions of a chattel pledge on which money has been lent free of interest, and lent unconditionally for an unlimited period. The person to whom the price of the work of art was paid, has the income-producing property. Mere evidence of past consumption should not be taxable. The income expended in the purchase was taxable and paid its tax once for all at the time of gathering, and probably a further payment of tax was made on importation of the work.

When a work of art is sold by one collector to another—a totally different matter from a similar transaction by a dealer—it frequently happens that there is a profit. Such a profit is accidental income and should be assessed accordingly. A collection is also assessable to estate duty. At the death of the owner it assumes a fresh quality of value, exchangeable—and likely to be exchanged—for income-producing property. The passing of this value to a new owner creates a phase of accidental income similar to that involved in any gift of intrinsic value. Property, for the purposes of the general property tax, should be in essence income-producing property. The confusion of property with wealth is responsible for the failure of the general property tax as regards personal estate.

License taxes on automobiles and similar conveniences are not sumptuary taxes unless *ad valorem*. A license to exhibit some form of ostentation is in the same category as a license to exhibit an advertising sign.

Since we began breaking away from the old general property tax which treated intangible and tangible property all alike we have really been making rapid progress, for a naturally slow moving political matter of this kind, toward an understanding of the problem and a solution of it. . . . The problem of the citizen owning non-local property has become almost inextricably entangled with the confusion of property and wealth. No

community rests content to have a wealthy man among its residents who does not pay taxes in the community. It is a great deal clearer that such a man is able to pay taxes and ought to pay them, than it is that he may be paying them somewhere else. Even if it were clear, the fact that a man pays taxes somewhere else is not at all satisfactory to the community in which he lives.[50]

This point was ably discussed sixty years ago by John Stuart Mill in one of his essays on *Some Unsettled Questions of Political Economy*, (London, Parker, 1844), where he said: "An additional customer to most dealers is equivalent to an increase of their productive capital. He enables them to convert a portion of their capital which was lying idle (and which could never have become productive in their hands until a customer was found) into wages and instruments of production. The aggregate produce of the country is therefore increased." In using the word, country, Mill was speaking of the effect of expenditure of rich Englishmen in Paris or Italy. The aggregate wealth of the group of communities would of course not be directly increased.

Statistics tend to prove that real estate values in any specified area increase in direct proportion to the consumption of wealth in excess of its production in that area.

In the following list of places it will generally be conceded that more wealth is consumed than is produced in the place.

	Population	Value of real estate
Pasadena, Cal.	38,364	$ 39,746,225
San Francisco, Cal.	440,995	447,777,237
Atlantic City, N. J.	52,098	82,571,471
Montclair, N. J.	24,014	36,348,923
Newport, R. I.	28,677	37,569,800
New York, N. Y.	5,198,888	7,861,898,890
San Diego, Cal.	46,685	44,613,954

On the other hand, it will be generally conceded that in the next list of places more wealth is produced than is spent in the place.

	Population	Value of real estate
Grand Rapids, Mich.	120,695	$ 61,261,215
Detroit, Mich.	520,586	316,630,290
Oakland, Cal.	175,201	104,031,900
Paterson, N. J.	132,236	84,278,487
Buffalo, N. Y.	446,889	318,552,250
Trenton, N. J.	104,451	63,639,223
Camden, N. J.	100,581	49,696,341
Chicago, Ill.	2,344,018	670,652,219
Lawrence, Mass.	93,471	55,721,100

Note. It is believed that no comparison similar to the above has previously been published. More extensive tables will give the same results.

[50] Report of Investment Bankers' Association of America to National Tax Association, 1914, by W. Hastings Lyon.

The figures are taken from reports of the U. S. Bureau of the Census, mainly from the Special Report on *Wealth, Debt and Taxation*, 1915: Municipal Revenues, Expenditures and Public Properties, 1913, table 4; Assessed Valuation of Property and Amounts of Rates of Levy, 1860–1912, table 9.

The figures reveal an apparent mean of $1000 per head which in the former list is in every case exceeded, with the slight exception of San Diego. On the other hand, in the second list the ratio is always considerably below that sum, sometimes less than half and in one case only one-third. The ratio seems to be in direct proportion to the ratio of the leisure class to the producing class, or rather in direct proportion to the expenditure of wealth in the place in excess of the production.

The facts suggest that the proportion of those who consume wealth in a given area to those who produce wealth in the same area does more to determine the value of real estate than the density or mass of the population. The faculty of these consumers has therefore been transferred to the owners of real estate and should be sought there, especially in unimproved values of real estate. The owners of real estate (of course including particularly those who have sold out at high prices) in an area of rapidly rising values, occupy the position of tax farmers collecting from the whole community in proportion to its consumption. The wealthy man residing in the place and drawing his income from elsewhere has contributed to the taxes in his payments to the owners of real estate (whether in rent or capitalized value included in purchase price), not only as regards the house in which he lives but in the charges added to the price of everything he consumes by the retailer, whose overhead expenses have been increased from the same cause.

In the more settled cities of the Old World the same results appear, with the additional confirmation that where during a period of years a change in the character of the population occurs, the ratio of value increases or falls according to the extent to which a producing population is replaced by the leisure class or vice versa.

CHAPTER IV

VARIATIONS IN STATE TAXATION

1. *Existing variations in major taxes.*—Up to 1914 the income tax as a state tax had only been adopted by seven states and in one of these—Massachusetts—in a modified form, the other states being North Carolina, Oklahoma, South Carolina, Mississippi, Virginia, and Wisconsin. Since then the state of New York has taken the question into serious consideration.

The general property tax is still the main source of revenue of all local authorities, and likely to remain so with regard to real estate, while in forty-three[51] out of the forty-eight states it is also the source of a portion of the revenue of the state itself, and usually is applicable to all purposes of the state. In New Jersey, however, its application is limited to school purposes. The tendency of the states is to reduce the application of the proceeds of the general property tax to specified purposes or to allocate it entirely to local authorities, relying for the state revenue on other sources. The franchises of public utility corporations offer a good source of taxation in some states but would not yield sufficient in other states to allow for the complete relinquishment of the general property tax.

Thirty-three states tax the franchises of corporations as such in lieu of assessment to the general property tax. Where franchises are not specially assessed it will be found that an elaborate system of business taxes exists, or that the state has not within its borders any of the greater corporations and that the railway mileage is mostly in the nature of a link between more important services.

There should be no great difficulty in obtaining the adoption of a uniform attitude toward franchises, and where the yield is insufficient on account of local circumstances the deficiency could be made up by reliance upon another source as a supplement.

[51] The exceptions are Connecticut, Delaware, Pennsylvania, California, and West Virginia.

This would be preferable to having exceptions to principles generally recognized by surrounding states.

As might have been expected, the inheritance tax is growing in favor, with a strong sentiment in the direction of an estate duty. Those states which have adopted the inheritance tax show a tendency to increase their reliance upon it, while those who have not done so exhibit a tendency to come into line.[52] In Alabama an authorization was enacted in 1907 and in Indiana the occasion is utilized for rectifying omissions to pay property tax; before any property can be inherited it is reduced by the amount of any unpaid property tax. "That a statute providing for the taxation of property previously omitted from the assessment or grossly undervalued, does not impair the obligation of a contract"[53] is a decision the effect of which might be usefully considered in increasing the yield of this tax and directing attention to the advantages of its extension. The attendance of a state official at the hearing of condemnation proceedings has elsewhere proved highly remunerative to the state in the collection of arrears due on property "grossly undervalued."

A curious contrast is exhibited between Montana and Massachusetts. The former state exempts realty from inheritance tax while the latter specially assesses it in the case of "non-inhabitants." It is a far cry from Montana to Massachusetts, so there is room for hope that the inhabitants of those states will not exhibit this diversity of attitude by the time the intervening states have been linked up.

The last of the five major sources of revenue is almost entirely in the hands of the federal authorities,[54] except in so far as licenses and business taxes are taxes on consumption. These are both overhead charges, and therefore their incidence is indi-

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[52] The states which up to 1914 had not levied inheritance taxes were Alabama, Florida, Georgia, Indiana, Mississippi, Nebraska, Nevada, New Mexico, and Rhode Island.

[53] *Sioux City R. R. Co.* v. *Sioux City*, 138 U. S. 98; *Covington* v. *Kentucky*, 173 U. S. 231.

[54] This of course refers to public taxation. A larger sum than ever reached the federal treasury is levied in another way and is a burden on the consumer exactly by the same incidence as if levied by the federal government or a state government. The matter is discussed in the next chapter.

rectly shifted like an *ad valorem* duty on a product. In this sense all the states might be regarded as levying taxes on consumption, but, as explained in chapter 2, business taxes and licenses have not the elasticity necessary to place them in the same category as a major tax on consumption and they are therefore regarded as minor taxes.

2. *Existing variations in the minor taxes.*—In 1902, Professor Carl C. Plehn made a unique and exhaustive analysis of the "Revenue systems of the state and local governments" of this country which was published by the Bureau of the Census,[55] but he made no attempt to summarize for the country at large the provisions in regard to fees, miscellaneous taxes and other miscellaneous revenues "for the reason that scarcely any two states have the same provisions and a summary would necessarily be little more than a reprint of what is shown, almost as conveniently, under the descriptions of revenue systems of the several states and territories." A person must be devoid of any sense of humor who fails to perceive the irony of such a statement coming from a responsible official.

It is reasonable to suppose that, in any locality, special circumstances may exist which render necessary slight variations from a uniform schedule under these heads, but it passes the bounds of probability that any rational ground could exist for an almost complete variation in each of the forty-eight states between which there is absolute freedom of trade and travel, and in each of which the same official language prevails. Even more remarkable still is the fact when considered in reference to the hundreds of lesser authorities many of which are so near to their neighbors as to almost form a part of the same community—the plan of the cities being so uniform that a stranger can scarcely tell one city from another. Cathedrals and similar prominent landmarks which constitute so notable a feature of European and South American cities, differing in each city, are almost entirely absent in this country. The monotonous uniformity of the American state subdivision and town site would lead one to expect uniformity in other respects, instead of which there is

[55] Special Report on *Wealth, Debt and Taxation*, 1907, pp. 612–949.

local option in taxation assuming the characteristics of a nightmare.

3. *Conflicting definitions of personal property.*—In twenty-one states personal property is defined as including all things other than real estate; in eighteen other states particular items are enumerated as coming under this heading, leaving the definitions to be stretched or closed to include or exclude the unenumerated items according to the view of the court which may happen to adjudicate in the matter, or more probably according to the varying views of different assessors. In thirty states debts may be deducted from credits in ascertaining the taxable value of such credits; in one state they may be deducted from all property, and in others of the remaining states the law is again different. The law relating to these matters is in some cases found in the constitution of the state and sometimes in the statutes, so that the difficulty of rectifying it is by no means the same in different states. The road to coördination in this particular matter will probably be found in the general abandonment of the assessment of personal property to the general property tax.

In many states mortgages are taxable as personal property of the mortgagee and no allowance is made to the mortgagor, so that double taxation should naturally follow.[56] In three states mortgages are not considered at all for the purposes of taxation, while in nine counties of another state they are assessed at a fixed percentage of the capital irrespective of the rate of interest. Such a condition of affairs amply justifies the stricture that "there is no clear and settled understanding even as to what constitutes the main subject of taxation—namely, property, and

[56] A has land to the value of $2000
B has cattle to the value of 1000
A gives a mortgage for 1000
B hands over cattle value 1000

As the law stands the land would be taxed at	$2000
The mortgage at	1000
The cattle at	1000
Total	$4000

Ergo 2 plus 1 is equal to 4.
This simple yet conclusive illustration is taken from p. 136 of the work of Luigi Cossa, *Scienza delle finanze.*

the meaning of terms which have formed the basis of statutes and legal practice are entirely different in the United States and other leading civilized nations. Thus the United States alone of the great nations of the world regards debts and credits as property rightfully subject to taxation."[57] One ceases to wonder at the boldness of the statement that "the trouble with our American scheme is that the facts are developing in spite of the law, and not in accordance with the law."[58]

"A mortgage must be considered either as a chose in action or as giving title to the land and vesting a real interest in the mortgagee. That it is but a chose in action, a mere evidence of debt is apparent from the whole current of decisions."[59] "A mortgage may undoubtedly be taxed when held by a resident, but when held by a non-resident it is as much beyond the jurisdiction of the state as the actual person of the owner."[60] And yet in practice business men consider a mortgage as something a good deal more than "a mere evidence of debt." It is not an indefinite security requiring action and judgment to put the mortgagee in possession. It might be said to constitute a quasi-estate in a specific property, and this quality distinguishes it in the minds of fiscal experts from claims which are a mere roving charge on the general credit of a person. In any scheme of reform of taxation few things are more important than some common understanding of the position of a mortgagee.

The circumstances of this country are quite different from the circumstances of the countries from which its real estate laws have been derived. The real estate laws of those countries were slowly built up through the centuries purely from the point of view of the great landlord. A mortgage was a relatively rare incident and the money was usually advanced by wealthy individuals of low social status, so that special care was taken to protect the estate. In this country the mortgage is a usual incident of nearly every purchase.[61]

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[57] Wells, *op. cit.*, p. 7.

[58] Seligman, *Essays*, p. 344.

[59] *Rickert* v. *Madeira*, 1 Rawle 329.

[60] *Wilson* v. *Schoenberger's Exrs.*, 31 Penn. 295.

[61] This matter is discussed more fully in part II, chapter III.

4. *Variations in exemptions from taxation.*—The exemptions from taxation show infinite varieties of treatment. As instances, it may be noted that a crematorium is specially exempted in Iowa, but apparently taxable elsewhere, unless it can be held to be included in the phrase "burial ground," as to which opinions may differ again. The property of Freemasons and Odd Fellows is exempt in Idaho and Nevada; if such property is not recognized elsewhere as "religious, educational or charitable" one might be led to conclude that those bodies are peculiarly strong in the two states named or that it is considered desirable that they should become so. Old maids escape taxation in Massachusetts if their possessions are small; the deaf and dumb enjoy the same privilege in Mississippi. Articles of personal adornment are specially exempted from taxation in the District of Columbia,[62] reason for which can readily be imagined in the necessity for display at social and diplomatic functions. One sewing machine is free from taxation for each family of small means in Alabama, while the use of musical instruments in churches is encouraged in Connecticut by a similar concession. Ten stand of bees are exempt in Iowa and one watch in Vermont, while deposits in savings banks are free from taxation in New York and New Jersey. (Apparently thrift is not appreciated to the same extent outside these two states.)

There is nothing new in the granting of special exemptions from taxation and in many ways the practice is commendable, provided it is not extended, by corrupt means, to the forming of privileged classes. It is as well, however, to have some approach to uniformity in custom. Allowances should not, however, be made for more than one year at a time and any discretion allowed to an official should be exercised publicly, on an occasion when objectors have an opportunity of appearing.

5. *Survival of the poll tax.*—The poll tax still survives in nine states, although two thousand years ago such a tax was considered ignominious and as implying subjugation.[63] A similar view has been the cause of innumerable insurrections in

[62] See pp. 151, 152.

[63] Am schimpflichsten war die Kopfsteuer, welche nur Sklaven ihrem Tyrannen erlegten, nur Unterjochte dem Bezwinger, wie die Einwohner

Europe when rulers have sought to revive this tax in later days. A poll tax is obviously unjust unless wealth is equally distributed and only in very primitive communities is such equality found. "Outside of the United States the poll-tax has only an historic interest."[64]

A poll tax is frequently urged on the ground that it affords the only means of reaching persons who otherwise would pay no taxes. The fallacy of this reasoning will be apparent from a single illustration. When a Marysville hop-rancher underpays his seasonal laborers by five or ten cents per day and then figures as a taxpayer for that amount, he is in reality merely the fiscal agent of his seasonal laborers, and has had the use of their tax money for some months free of interest. Subsequently to assess those laborers to a poll tax on the ground of their faculty not having been reached would be double taxation.

6. *Business taxes and licenses.*—When one turns to the business taxes and licenses of the different states they are found to be of such a character as "practically to defy classification. Many of them are partly regulative and partly sumptuary."[65] Mississippi alone selects barber shops for taxation at a rate "per chair"; Alabama taxes "bond makers" and Tennessee, "check rooms." Texas specialized until recently on cockpits and dogfights as revenue producers, the latter entertainment being assessed at $500,[66] and placed on a par with "selling cannon crackers," which still renders one liable to a tax of like

der Provinzen dem siegreichen Rom.—A. Böckh, *Die Staatshaushaltung der Athener* (Berlin, Reimer, 1886), I, 371.

Sede enim agri tributo onusti vilores, hominum capita stipendis censa ignobiliora, nam hae sunt notae captivitatis.—Tertulliani, *Liber Apologiticus* (Camb. Univ. Press, 1843), art. 13, l. 25.

[64] C. C. Plehn, *Introduction to Public Finance*, p. 231.

[65] Plehn, "Revenue Systems of State and Local Governments," 1907, p. 638.

[66] *Code of Texas*, Art. 5049. Subsequent legislation in Texas (*Laws of 1907*, p. 156) appears to have modified this provision, whether for better or worse from a revenue point of view, being a question of administration. It is provided by the law of 1907 that "Any person who shall keep any cockpit or other place for the purpose of matching fights between cocks or any other animals or fowls shall upon conviction be fined not less than ten or more than one hundred dollars. Each day shall constitute a separate offence." Thus the fee of $500 referred to in the Code would cover at least five performances at the maximum rate, while at the minimum rate there could be one contest per week. As there is

amount.[67] Apparently a conjuror may delight his patrons with displays of sleight of hand free of tax everywhere throughout the United States except in Alabama and Texas, in which states he is required to pay respectively a tax of $10 and $25.[68] No hint is given as to whether the citizens of these states desire to discourage this sort of thing or whether Alabama and Texas are particularly lucrative fields for the practice of legerdemain.

The osteopath was formerly selected in Connecticut for a tax not payable elsewhere and the oculist received a similar attention in Louisiana, but recent legislation (since 1907) has favored the extension of the opportunity of contributing to the revenue to those practicing these professions in several other states. On the other hand, Georgia, which formerly stood alone in taxing architects, has omitted this profession in recent enactments, while Mississippi has now included architects, and still retains the distinction of taxing piano and organ agents, although the vending of other musical instruments is now similarly discouraged. This state also retains the tax of $500 on vendors of second-hand clothing and $20 on undertakers; but other states do not appear to have yet alighted on this source of revenue, except Tennessee, which values the franchise of an undertaker at as much as $50.[69]

One state recognizes dealers in "noiseless guns, bowie or dirk knives, or brass knuckles" for a fee of $100.[70] One would think that a list of the customers of these dealers might prove useful to the police, in whose museums such weapons usually

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no provision for any increase in the case of a second conviction and as there is no alternative to the fine, the result would be simply a matter of revenue, and the state might be worse off than under the Code according to whether the maximum fine was collected by the state or whether some lesser amount was collected by a private or official informer as a condition of abstinence from activity.

[67] *Statutes of Texas,* 1909, p. 174.

[68] *Code of Alabama,* Art. 2361, sec. 57; *Code of Texas,* Art. 7355, sec. 17.

[69] Everyone is familiar with the circumstances under which Mark Twain's immortal contribution to the literature of taxation was lost to the world through the persistent interference of lightning rod agents and it is therefore not surprising to find at least twelve states singling out the lightning rod agent for special taxation, requiring him to pay as much as $50 per county in Georgia and a lump sum of $300 in New Hampshire (*Sessions laws,* 1913). However, he entirely escapes this special taxation in all western states.

[70] *Statutes of Alabama,* 1911, chap. 216, §22.

find their principal display. Carrying on the business of "shoot the chutes" or of a slaughterhouse entails a tax ranging from $20 to $6250, and "for any place where can-can, codache, or similar female dancing or sensational performances are held, the tax is from $2500 to $5000."[71] The number of men employed by a contractor might under certain circumstances be an indication of his taxable faculty, but his profits would be a far safer gauge; considerable possibilities of "speeding up" and other irregularities are suggested by charging the contractor, where the number of men employed is ten or more, $50."[72] One cannot imagine the electorate of California approving such a basis.

In Virginia, "Gypsies who receive rewards for fortune telling" are taxed "$200 for each county which they enter,"[73] an enactment suggestive of the existence of credulity in large and lucrative quantities. Attention is arrested not only by the formidable number of business taxes and licenses, but by the extreme diversity of their application. Business taxes in the Southern States were conceived with a view to reaching faculty of such occupations as were conducted itinerantly or in a manner by which large income could be secured without the existence of any corresponding taxable property. When, however, one contemplates the three hundred and odd main headings of taxes payable, one wonders whether the business man or woman really studies the matter in detail or takes a chance of dodging the hordes of collectors which would be expected to beset the commercial path. In either event the phenomena suggest an exciting experience for the conscientious worker. The illustra-

[71] *Revised Code of Louisiana*, Art. 6477.

Note.- The usual result of high taxes on certain classes of entertainment is to make them more expensive to the patrons and more exclusive. The mere verbal interpretation of the law which prevails in this country coupled with the much greater latitude permitted to the police would render such a tax difficult of administration whatever its intention, to say nothing of the primal legal difficulty of ascertaining its intention. "The result is a temptation for the police which human nature is hardly strong enough to resist." (F. J. Goodnow, *City Government in the United States*, New York, Century, 1906, p. 232). The whole chapter from which this passage is taken would prove highly instructive reading in connection with the consideration of business and license taxes.

[72] *Laws of Mississippi*, 1912, p. 82.

[73] *Code of Virginia*, Art. 533a.

tions selected, regarded as merely a slight percentage of the whole schedule, are sufficient to indicate that there is scope for coördination in this direction also.

7. *Variations in assessment and valuation.*—In seven states, the laws make no special definition of property for purposes of taxation; in eleven others, from three to fifteen classes of property are recognized and specially defined as subject to taxation. The result must obviously be to find work for the lawyers and the courts and if the confusion be thereby increased one cannot blame the courts, which are merely concerned with the interpretation of the law according to recognized rules; the fault lies elsewhere.

In ten or more states, improvements on land are specially defined so as to imply treatment or valuation apart from the land. The number of these states tends to grow and there is probably no direction in which coördination could be more usefully initiated than in the complete separation of the valuation of land from the improvements upon it.[74] That a perfectly accurate valuation cannot at once be attained is no valid argument against the advantages of a separation of values. There is no such thing as a perfect assessment.[75] It is always approximate, but with constant adjustment on complaint of neighbors

[74] This is not nearly as difficult a matter as its opponents, from interested motives, would wish people to believe. So far as urban property is concerned, in most cases all that is involved is the valuation of the buildings and the deduction of that sum from the real estate value of the total property. In the case of reclaimed lands on tidal waters the whole cost of the reclamation, the pile driving and the special foundations of the buildings would also be taken into account, while in the case of certain agricultural lands, draining, fencing, irrigating ditches and other work necessary to fit the land for its purpose have to be considered. Nevertheless all that is necessary is in each case to value these—the actual expenditure as evidenced by the paid bills being prima facie evidence—and to deduct the cost from the total selling value of the property. When the improvements equal or amount to more than the selling value several conclusions are suggested: first, that the land has no value apart from the improvements; second, that the money has been badly expended either by reason of experiment or lack of judgment; and lastly that there is falsification somewhere. The second point could be determined by a jury of commercial men, the third would be a matter for a court.

[75] "When all factors contributing to value are supposed to be taken into account and when in this way the board of assessors entirely avoid the responsibility of saying how their ultimate assessment is made up—even assuming it to be known to themselves—such a system obviously has the fatal defect of making it impossible either for the railroads or the general public to distinguish between the most accurate and consci-

and on appeals fostered by publicity of assessments, the tendency will be to approach to an approximation to accuracy that will be generally satisfactory.

In eleven states and the District of Columbia, personal property is not specially defined for purposes of taxation; in twenty states, it is defined as including all things other than real estate; and in seventeen other states, it is only defined by the enumeration of the particular items included. Many items are specifically and arbitrarily defined as real estate or as personal property respectively. For instance, certain franchises are treated as real estate in New York and Wyoming; railroad tracks are treated as real estate in seven states and as personal property in four others; toll roads or turnpikes as real estate in four states and as personal property in another.

Washington is responsible for the following curious enactment: "Ships registered in any custom house of the United States within this state and used exclusively in trade with other states and countries shall not be subject to taxation in this state such vessels not being deemed property within this state."[76]

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entious valuation and mere ignorant guesswork or quite prejudiced and even dishonest returns."—Ontario Commission on Railway Taxation, Report, 1905, p. 53.

[76] *Statutes of Washington*, 1907, chap. 48, §1.

Note. The peculiarity of this enactment is that it is opposed to the principle laid down in the case of *Hays* v. *Pacific Mail and Steamship Company*, 17 Howard 596. The point at issue in that case was the right of the authorities of a Pacific port to tax a vessel registered in another state and therefore liable to taxation in that other state, whereas in the Washington enactment the exemption applies to vessels registered in the state of Washington, thus for some unknown reason depriving the state of Washington of the very power indicated in this decision as appertaining to the state of Washington, it having been held that "The domicile of a vessel is the port at which she is registered and where it is admitted the capital invested is subject to state, county and other local taxes."

Thus vessels engaged in foreign trade if registered in any custom house within the state of Washington entirely escape taxation anywhere. They escape it in their domicile—Washington state—by virtue of the statute, and they escape it elsewhere by virtue of the legal decision quoted.

It is possible—perhaps probable—that this unique enactment was framed to attract foreign ships to the port of Seattle, enabling them to avoid the taxation due to their domicile by registering at some custom house in the state of Washington. The enactment of a similar provision by all the maritime states might give rise to some curious constitutional considerations. Since the preceding note was made, the example of Washington state has been followed by California (Amendment to Constitution, November 3, 1914).

Fifteen states make no provision for equalization or uniformity of assessment throughout the state, and eleven states make no provision for equalization in the counties, while in the remaining states the boards of equalization are regulated in their actions by twenty-eight different methods.

The actual rate of taxation for state purposes is limited by the constitution or by general statute in sixteen states, a condition of affairs undreamt of outside this country. In the other states the usual course of fixing the rate annually is observed, but with certain modifications of the budget principle. In one state, for instance, "the assessment of all classes of property is based on twenty per cent of the actual value," which value is defined as "the value in the ordinary course of trade."[77] It is further provided in the same enactment that the rate of the general tax is to be "not more than five mills on the dollar of valuation." Apparently the same result would have accrued by taking the full value and fixing the rate at a maximum of one mill. It is not a little surprising to find this same state only two years later suddenly placing itself in the van of progress in the effort to obtain a reasonable and coördinated system of taxation by appointing a commission of five men "specially qualified by experience" to study and deal with the problem of taxation "and to compare conditions in this state with conditions elsewhere."[78] What sign could be more hopeful?

Among the systems of railway taxation are the primitive system of the general property tax, an *ad valorem* valuation of tangible property including the value of the franchise, specific valuation by the stock and bond method, and finally the taxation of earnings either gross or net. "All these methods are in force somewhere, resulting in chaos."[79] Such a condition of affairs is not surprising where no general conclusion has yet been reached as to whether the railways exist for the people or the people for the railways.

A relatively progressive state in the matter of taxation and law requires the assessor to determine the "full and fair value"

[77] *Revenue Laws of the State of Nebraska*, 1911, chap. 77, §§12, 134.

[78] *Statutes of Nebraska*, 1913, chap. 188, §1.

[79] Seligman, *Essays*, p. 182.

of real property "at such price, as, in his judgment it would sell for at a fair and bona fide sale by private contract on the twentieth day of May."[80] It is not clear why the price which the assessor thinks the property would fetch on the twentieth day of May (a price obviously contingent upon the existence of one or more willing buyers) should be the "full and fair value." The definition "similarly situated"[81] seems to be a better criterion.

It surely would be difficult to discover a more quaint enactment in relation to assessment than the following: "Both credits and debts are to be estimated at no larger sum than it is believed can be collected or paid."[82]

As further illustrating the varying definitions of value the following may be quoted: "All property which may be taxed *ad valorem* shall be assessed for taxation at its fair cash value, estimated at the price it would bring at a fair voluntary sale."[83] "All property shall be assessed annually with reference to the first Monday in March at its true cash value—that is, the amount for which such property would sell at a voluntary sale made in the ordinary course of business."[84] The first Monday in March might, however, be either a day of high or low prices "in the ordinary course of business," a circumstance which could lead to considerable variation in the yield of any specified rate of tax. Again, "All property liable to taxation shall be assessed at its full and fair cash value by the assessors."[85] "The board shall not increase the aggregate assessed valuation in this state as equalized by the boards of county commissioners by more than $100,000,000."[86] This is probably a unique instruction. If the limit be effective it is difficult to see how the duty can be performed under such restriction; if the limit be more than ample, the provision would appear to be superfluous.

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[80] *Tax Law of New Jersey*, 1903, chap. 208, §6.
[81] *Constitution of California*, Art. XIII, sec. 2.
[82] *Code of Ohio*, 1910, Art. 5327.
[83] *Constitution of Oklahoma*, Art. X, sec. 8.
[84] *Code of Oregon*, 1910, Art. 3586.
[85] *Revised Laws of Rhode Island*, 1909, chap. 58, §3.
[86] *Revised Code of South Dakota*, 1913, Art. 2110.

Again, "Real property is to be valued annually by the assessor, either from actual view or the best information that the assessor can practicably obtain at the full value which could be obtained at private sale," and "all articles of personal property upon actual view at their true cash value."[87] One could imagine the assessor of a tiny New England village taking an "actual view" of "all" his neighbors' property, but the "best information available" in a large western city as to the "full value that could be obtained at private sale" of property of which only a mental picture could be visualized, is a conception that opens up wide possibilities.

The last item to which reference will be made in this connection contains an unusual provision, but one worthy of favorable consideration: "All coal lands in the state from which coal is *not* being mined shall be listed for assessment, valued for taxation and assessed according to value."[88] If this be intended and construed as a step toward the principle of taxation according to capacity it is a very valuable suggestion, the basis of assessment in this state being the "actual or full cash market value."

Are all the definitions of value adopted by the different states intended to mean the same thing? If so, there could be no objection to an agreement to a uniform wording. If they are not intended to mean the same thing, there must be ground for a serious attempt to formulate a common understanding and to coördinate the differing systems. The instances quoted by no means exhaust the element of variety, but they are sufficient to support the contention that at present there is little approach to uniformity.

A book might be filled with illustrations of curious constitutional provisions, with the result of emphasizing the difficulties confronting the judiciary in any attempt to assist coördination. There are many unique and exceptional provisions that need have no retarding effect, but no one is certain of this until the enactments have been tested judicially item by item.

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[87] *Wisconsin Statutes*, 1911, §§1052, 1055.

[88] *Constitution of Wyoming*, Art. XV, sec. 2.

CHAPTER V

THE EVOLUTION OF FACULTY

1. *Tax farming; its antiquity.*—From the day when the first embryo monarch descended upon a peaceful community to levy tribute for his personal expenditure, vicariously and otherwise, it became apparent that the surest road to great accumulations was through the small contributions of large numbers of individuals rather than by the older method of beggaring one's neighbor. Of course personal labor was out of the question. No one ever acquired a fortune through his own unaided labor. Thus to take a hand in the collection of tribute became the highest aim of all ambitious persons; and to retain office and hand it to one's successor, for a consideration, became the art of all courtiership. Gradually these privileges came to be acquired in consideration of support to the heir of the monarch, a give-and-take principle, only the giving and taking were in both cases applied to the fruits of the labor of third parties. In modern times the heir of the monarch is represented by the heir of the political party in power—a fresh term of office. Thus grew up satrapies and governorships of provinces and all grades of tax farming down to the village collectorship and thus grew up all franchises and monopolies which were either sold to wealthy bidders or awarded to favorites.

Only three centuries ago, a king of England granted to one of his illegitimate sons the right to collect a private tax of thirty-five cents per ton on all coal exported from the Tyne, the richest coal port of a country rich in coal, and to this day an earl enjoys the sole right to mine over the greater part of an English county, a privilege that enables him to tax privately every ton of coal raised from the valuable seams existing in that area. These are undoubtedly taxes on consumption, no part of which ever reaches the public treasury as such. They exemplify the extreme limit of tax farming—the sovereign abandoning the whole proceeds to the collector. It would be unjust to cast any

opprobrium on the recipients of these benefits. They are quite within their rights in exploiting their advantage to the fullest extent. If there be anything wrong in the transaction, it is the act of the sovereign power, and it makes no difference whether the sovereign power is wielded by a despotic monarch or by the state government of a democracy. "To lay with one hand the power of the government on the property of the citizen and with the other bestow it upon favored individuals to aid private enterprises and build up private fortunes is none the less robbery because it is done under the form of the law."[89]

2. *The persistence of tax farming under new forms.*—The collectors of tribute were not slow to utilize their position. So long as the area under their jurisdiction yielded sufficient revenue for the needs of the sovereign power, the methods of collection and the margin of profit were not inquired into; this same attitude was adopted by the chief collector or governor of the province in delegating the collection to those who were willing to undertake the work in consideration of being allowed to retain all that they could exact over and above the contribution which they were prepared to offer as consideration for the privilege. The modern concessionaire of the monopoly of collecting revenue from the users of power developed by the water from a government reservation, occupies a position analogous to that of chief collector of tribute of earlier days; the corporation which exploits the privilege exactly fills the rôle of the tax farmer of old.

Such perfect modern parallels are strangely missed by writers of repute with all the facts before them. The change which has occurred in the nomenclature and the changes which have occurred in industrial processes and methods of exchange and distribution, seem somehow to obscure the fact that the things themselves have not changed in substance at all but are merely presented in a fresh dress. Thus we find such statements as the following: "While the farthest reach of history touches no period when government or the state has not appropriated for its maintenance or pleasure the property or services of its subjects or citizens, the present ideas respecting taxation are so

[89] *Loan Association* v. *Topeka*, Supreme Court U. S., 20 Wallace 664.

essentially modern that little or no recognition of them can be found in either ancient or medieval history. In fact no taxes in the present ordinary sense of the term were needed in ancient times to carry on government or public institutions. The monarch, king, chief, lord, or other sovereign of any particular district or country was generally the owner of all landed property within his empire or domain; and the people who cultivated it were his villeins, serfs, or tenants. A sovereign who owned all the land of a country and could at his will take any portion of the labor product of the people who cultivated or occupied it, obviously was exempt from the necessity of resorting to any other form of levy. . . . Throughout the Eastern world the general practice has been and even still is, for the tribute or tax collectors to pay themselves by peculations, and to extort from the cultivator the utmost that could be taken without compelling him to abandon his fields.''[90] If the word profit be substituted for peculations in the last passage the whole description will exactly fit modern conditions in a score of localities in this country. There are today areas where the ''[land] lord or other [exercising] sovereign [rights]''—a corporation it may be—owns all the land, minerals or timber, and the people for all practical purposes are his or their ''villeins, serfs, or tenants.'' No single circumstance has changed; the nomenclature and external appearance alone have altered. The recognition of these facts is vital to any coördinated thought in matters of taxation.

The tendency of monopolies is to increase in number; those that are the subject of franchises today were free undertakings at one time, and the trusts allowed to operate freely today, must tomorrow be regarded as the creatures of franchises. The idea of a franchise requires perpetual expansion to keep pace with changing conditions.[91] Whenever an individual or a corporation

[90] Wells, *op. cit.*, p. 75.

[91] ''The definition of taxable property should be so drawn as to clearly include not only the franchises of corporations, but the good will and going value of firms and individuals as well. As society becomes more and more complex, so much the more valuable becomes that form of property—that earning power—arising from organization, and known as good will or the value of a going concern. In most states franchises are defined as property, but good will of firms and individuals, while usually well within the definitions of taxable property, is rarely taxed.''—C. C. Plehn, ''Ideal system of state and local taxation,'' Bull. Univ. Washington, no. 84, 1914, p. 215.

is able to acquire a position from which the price of a commodity can be raised without decreasing the demand or where the profits can be kept at a maximum by a higher price compensating for smaller sales, that individual or corporation is in possession of a franchise, and the law must make the description agree with the facts. The exploitation under these conditions of timber, oil, coal, or any mineral or metal, especially where competition is eliminated by a protective tariff, is as much a franchise as the exploitation of transportation, water, or lighting. The difference between trading and the exploitation of a franchise is one of conditions and not of name. A monopoly, in any given area, of a profitable form of business is the usurpation of a privilege of sovereignty; it is tax farming in all but name, "it is a right, privilege or power of public concern which ought not to be exercised by private individuals at their mere will and pleasure, but should be reserved for public control and administration, either by the government directly, or by public agents, acting under such conditions and regulations as the government may impose in the public interest and for the public security."[92] It is not a matter for the exercise of police powers in the name of undue restraint of trade; it is essentially a matter for fiscal administration.

"The power to tax is delegated to the legislature; but the general rule holds that a delegated power cannot be delegated by its recipient to others,"[93] and express provision is made to this effect in several state constitutions. But it has not yet been sufficiently recognized that the privileges which cause the vast accumulations that here and there are found in private hands are actually delegations of the power to tax. What the government really wants of its people when it calls upon them for taxes, is work, and the methods of taxation are only methods for collecting and using the products of work.[94] And it is precisely this power of collecting and using the products of work which has been delegated. The function exercised by the so-called "captain of industry" is a function of sovereignty. The *corvée* or

[92] *California* v. *Pacific Railroad Co.*, 127 U. S. 40.

[93] R. T. Ely, *Taxation in American States and Cities*, p. 23.

[94] E. Atkinson, *Taxation and Work*, N. Y., Putnam, 1892.

any system of forced labor differs only in name from the modern system. For this reason the ordinary citizen of this country has come to defer more greatly to the captain of industry than to the state because the citizen correctly recognizes that the former exercises the greater degree of sovereignty.[95]

3. *The significance of tax farming.*—Taxation has been well described as "the deflection of the resources of members of the taxed community from purposes which they would have selected for themselves to purposes which are selected for them by the governing power."[96] This is precisely what happens when the community contributes pure profits in the purchase of monopoly products; the members of the taxed community—that is, the purchasers within the territory exploited by the monopolists—have a portion of their resources deflected from purposes which they would have selected for themselves, to purposes selected by the proprietors of the monopoly. "A tax is a demand of sovereignty"[97] and by correct logical inversion a demand of sovereignty for money is a tax. A demand of sovereignty is a demand which cannot be resisted, and any person or corporation in a position to demand that which *must* be paid is exercising the rights of sovereignty by delegation and therefore collecting a tax; and the collection of a tax, the proceeds of which can be privately appropriated, is tax farming, disguise it how you will. The essential quality of trading is unlimited competition. When neither by law nor any other means can the element of competition be restored, the profits of an undertaking become tax farm-

[95] In the sale of property subject to a tax that cannot be shifted, the tax is capitalized at an amount which is *deducted* from the selling price. Thus the first holder pays the whole of the tax. The sale of watered capital—that is capital which does not represent any tangible asset—is the exact counterpart of the sale of a taxed monopoly just referred to, with this important difference: the vendor capitalizes anticipated profits or economies and more particularly the results of the anticipated increase in the efficiency of the workers, and *adds* this sum to the sale price of the undertaking. Thus just as in the former case the first seller bears the whole of the tax, so in the latter case the first seller reaps the whole of the profit. Often, however, the first and subsequent purchasers find they have paid for what never matures and have to divide between them, as best they may, the loss which to them is exactly what they would have experienced in accepting counterfeit money.

[96] P. H. Wicksteed, *The Common Sense of Political Economy*, London, Macmillan, 1910.

[97] *St. Louis* v. *Western Union Telegraph*, 148 U. S. 92.

ing pure and simple. Such an undertaking enjoys a privilege which must be recognized as a franchise, and "There is no constitutional inhibition against the legislature adopting any mode to arrive at the sum which it will exact as a condition of the continued existence of the corporation."[98]

In a passage previously quoted[99] attention is drawn to the growing complexity of society having created fresh values "well within the definitions of taxable property." It is as if some subterranean disturbance had formed a passage from a government reservoir to a private farm and that some individuals on this private farm had inadvertently tapped this source and, distributing the supply, thus acquired a monopoly of an essential need, the monopolists accepting the credit, and the wealth, bestowed upon them as "kings of enterprise" by a shortsighted public. These fortunate individuals remind one of "Tommy Tucker" in the nursery rhyme, who claimed a reputation for cleverness on the ground of having extracted a plum from the pie. There need be no mystery about the jugglery of high finance and the imaginary ability attributed to those dwelling in its inner sanctuary. "A nation through its administration can employ the same wands and the same incense used today by the financiers; and if ever a nation, under proper control, begins to finance in this way, it will not be easy to finance much higher; for the reason that untaxed consumption is worth more in annual wealth producing power than taxed and strangled markets;

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[98] *Horn Silver Mining Company* v. *N. Y. State*, 143 U. S. 305.

Note. "Although the entire yearly income from tariff duties is about $326,000,000, which means $3.50 a person or $17.50 a family, the annual private tax of monopoly which makes the invitation to combine irresistible, is over $4,000,000,000, which means $40 a person or $200 a family."—Governor Foss, speech at the Cleveland dinner of the National Democratic Club, New York City, March 4, 1912, published in *The Trend*, March, 1912, p. 541.

"It is precisely because in modern times the forces working towards diminishing returns have, in many instances been overtaken by men's mastery over nature that we notice the well-defined movement towards trusts, pools and combinations."—Seligman, *Shifting Incidence of Taxation*, p. 203.

The essential and vital difference between monarchy and democracy is that in the former case the wealth of the nation is distributed according to the choice of an individual and in the latter by a committee responsible to the people; and it matters not whether the monarch be an hereditary ruler or a king of industry or enterprise.

[99] Bull. Univ. Washington, no. 84, 1914, p. 68.

and a nation, through its administration, can control all the institutions, all the franchises, all the arts, all the taxes, and all the guns. This is direct high finance.''[100]

The history of taxation shows that in its first inception the law nearly always lets a great many through its nets; there is therefore nothing strange in the fact that quasi-franchises should have arisen which were not contemplated by existing laws.

4. *Present-day illustrations.*—The Likin taxes of China are often referred to—and with opprobrium—as instances of irresponsible taxation on the transit of goods, and it has also been recorded, as evidence of the evil of days which we are innocently taught to believe have passed away, that ''prior to the French Revolution of 1789, a duty was levied twenty-seven times on a barrel of wine in the course of its transportation from the place where it was grown to where it was sold.''[101] Yet agricultural products on their way from Oklahoma to the consumer in Chicago have been at this day known to have been increased in price by twelve hundred per cent, a very small portion of that sum being due to freight charges. ''The ground rents of a particular city are caused only indirectly and in part by its inhabitants. The western farmer, when his grain is exported from New York, pays tribute to the landlords there, and the same is true of the people who consume this grain.''[102] If the traffic was taxed all it would bear in the days when tax farmers were recognized as an integral part of the organization of the state, surely it must be obvious that tax farmers have not ceased to exist but operate just as freely today, only under other names. We flatter ourselves that, in fiscal matters ''the former things have passed away'' already, when in reality very little has changed except in name.

''Revenue from taxation forms a derivative and not a direct revenue to the state.''[103] The taxes are first collected by the tax farmers. The difference between the ancient and medieval systems of taxation was in the enlargement of the number of

[100] F. Matthews, *Taxation and Distribution of Wealth*, pp. 637–38.

[101] Wells, *op. cit.*, p. 75.

[102] Means, *op. cit.*, p. 59.

[103] H. C. Adams, *The Science of Finance*, p. 291.

objects capable of being made the base of a tax; the difference between the medieval systems and those of today is not so much in the increase of taxable objects as the recognition of the absorption of ancient sources by private proprietorship and the rediscovery of the source under a modern disguise and a new name. But there is always the state and there are always the tax farmers who today as ever pay themselves by extorting "all the traffic will bear."[104]

When a patent is granted for a valuable process or a copyright for a book; when a franchise is granted for a street railway or other public utility, some limit is set upon the duration of the privilege and a commission sits to regulate this modern form of delegated taxation; but when a more valuable franchise is granted, as the recognition of a Spanish title to some vast tract of land, or the privilege of exploiting a forest, a mineral belt, or an oil field, no precaution has hitherto been taken; the tribute which those properties are capable of yielding is handed over to the modern tax farmer in perpetuity. Yet the consequences of even this error can be mitigated by fiscal science. The taking of an adequate portion of the tribute resulting from these grants is after all merely an *ex post facto* settling of the amount which the tax farmer shall pay for the privilege.

In the decision of a notable case the court said: "We have established, we think, beyond cavil, that there can be no lawful tax which is not laid for a public purpose,"[105] and although no such construction was in view at the date of the decision—principally because the circumstances warranting the deduction had not then arisen—yet it logically follows that whatever is in the nature of a tax, or is under some disguise what was formerly a source of revenue to the state as a tax, must not be appropriated by a private person, but can properly be required to be devoted to a public purpose.

At first sight it might appear that undue space has been devoted to the subject of the last four sections, but it is claimed

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[104] The origin of this trite phrase is questioned, but it is usually attributed to one of the Vanderbilts in some contemptuous reply to a member of one of the abortive commissions which some forty years ago inquired into the basis of railway charges in New York state.

[105] *Loan Association* v. *Topeka*, Supreme Court U. S., 20 Wallace 655.

that few things will so quickly simplify the difficulties which beset any attempt at coördination of taxation as a due appreciation of this elementary fact of tax farming and its persistence throughout the ages.

5. *The application of certain existing taxes.*—A state can take steps to prevent double taxation within its boundaries; a group of states can take similar steps with regard to property distributed in several of the states of the group, and a federation can act in the same way. The difficulty of the prevention of double taxation increases with the extension of the area in which an individual operates. Theoretically it should not occur in the whole world; theoretically also, inheritance and income taxes should be levied over the whole world and their proceeds expended over the whole world, and this would be deemed essential as soon as the whole world recognizes its interdependence; but as the recognition of interdependence is the condition of the world-wide faculty for assessment, so the utmost limits of interdependence as recognized practically—not theoretically—at any period, must be the area to which an income tax or an inheritance tax must apply. At present the largest area is that of a perfect federation of states between which there is absolute freedom of trade. The application of an income or inheritance tax to any less area exclusively, must inevitably lead to injustice at some time.

This view has received an unexpected extension in a recent report in which a suggestion appears of "a mutual arrangement among the different countries which levy an income tax, with the result that each individual will be taxed upon his entire income only once, each country taking a certain share of the tax."[106] The idea is considerably modified by the remark that followed: "International comity has unfortunately not proceeded very far along this line." When it is remembered that France does not yet levy an income tax, that large incomes are derived from such places as China and Japan, the Malay Archipelago, and other places quite unlikely at present to launch into considera-

[106] Report of Committee on the Federal Income Tax, Proc. Nat. Tax Assoc., 1915, p. 35. This committee numbered among its members some of the ablest exponents of the science of taxation.

tions of this nature, the extension of adjustment beyond the limits of our own country can have little more than an academic interest at present. There will for a long time be many more large incomes that escape due taxation than that suffer from double taxation.[107]

There is always a danger in launching out on such speculative seas, as it furnishes opponents with material for the teleological method of shelving unpleasant truths. There will be time enough to consider the fiscal status of persons and property in foreign communities when complete coördination has been attained in the commonwealth with which we are politically able to concern ourselves.

6. *The place of the income tax.*—When wealth and population are approximately equally distributed, as in a few selected places, a local income tax would not be open to logical objections, but the further we find ourselves from this condition the

[107] Supplemental Report on Proposed Income Tax, submitted to Special Tax Commission of New York State, 1907.

The following facts have been fully established before this Commission:

The richer a person grows the less he pays in relation to his property or income.

Experience has shown that under the present system personal property practically escapes taxation for either local or state purposes. As proof of this the following table showing the amount assessed against well known multi-millionaires on personal property for the year 1907 in the City of New York, is as follows:

August Belmont	$ 100,000
Oliver H. P. Belmont	200,000
Cornelius Bliss	100,000
Andrew Carnegie	5,000,000
Henry Clews	100,000
Wm. E. Corey	100,000
Morris K. Jessup	100,000
Chauncey M. Depew	50,000
John W. Gates	250,000
Frank J. Gould	50,000
John D. Rockefeller	2,500,000
John D. Rockefeller, Jr.	50,000
William Rockefeller	300,000
H. H. Rogers	300,000
Russell Sage	2,000,000
Alfred G. Vanderbilt	250,000
Cornelius Vanderbilt	150,000
Elsie F. Vanderbilt	100,000
Fred W. Vanderbilt	250,000
George W. Vanderbilt	50,000
William K. Vanderbilt	100,000
John Jacob Astor	300,000
George Ehret	200,000

further are we from a logical justification of a local income tax. In ancient times the conditions of approximately equal distribution of wealth and population were easily found, as they still exist in the early days of any settlement, but as isolation decreases economic inequality increases, and every community tends to become part of the world community. The inception of an income tax of any sort in this country, so far as a state is concerned, is the outcome of a recognition of the failure of the general property tax, and by the federal government, of the need for additional revenue owing to the increase of expenditure on national affairs. The recognition of the failure of the general property tax has been coincident with the completion of the appropriation of the public land.

The state of Wisconsin is always looked to as a bright example of things as they ought to be financially, and one cannot speak lightly of any effort made in that state in the direction of reform in taxation, but an important provision of its income tax law which bears out the preceding contention, is that which allows from the amount payable as income tax a deduction of the amount paid for personal property tax. Thus whenever the amount payable on the personal property tax equals or exceeds the amount computed as payable on the income tax the latter will be cancelled altogether. The tax is levied on "all income which residents of the state receive from within or without the state as well as that which non-residents receive from within the state,"[108] a provision that would apparently not be upheld in Pennsylvania, where the income of a non-resident has been held to be "as much beyond the jurisdiction of the state as the actual person of the owner."[109]

"The experience of Wisconsin must not be misread. Her income tax has proved successful because intangible property was exempted from other taxation, the rates imposed upon incomes were moderate, and the law was enforced by non-political assessors appointed for merit and responsible to the State Tax Commission."[110] From this it will be seen that however suc-

[108] *Wisconsin Income Tax Law*, 1911, §1.

[109] *Wilson* v. *Schoenberger's Exrs.*, 31 Penn. 295.

[110] C. J. Bullock, "Practicable Reforms in State and Local Taxation," Bull. Univ. Washington, no. 84, 1914, p. 237.

cessful the levy may prove in some special area, the test is not true for other places where similar circumstances are absent. "Taxes are never assessed upon persons as persons, but upon them on account of their goods, and the profits made upon professions, trades and occupations. Taxes regard the persons of men only because of their goods. The goods are taxed and not the persons. But those who are to pay the tax are taxable persons because they are under an obligation to contribute from their means to the necessities of the state."[111] "The taxation of commodities or of income is far better fitted for the control of the central government. . . . A system of state income taxes will also fail owing to the difficulty of localizing income."[112]

In spite of the contentions just set forth against the adoption of local income taxes, quite a number of men whose opinion is worthy of the highest respect, have clung to the idea that in some way or other the income tax should be utilized for state purposes. The solution of the problem has apparently arrived quite recently. Professor Seligman, by what is worthy to be characterized as a stroke of genius, has perceived that the objections were only valid against independent levies of local income taxes, and has evolved a scheme which so far appears to offer a basis of agreement for both sides. The scheme is arrived at by the adoption (perhaps unconsciously, not admittedly) of a device used by a country in which the income tax finds little favor—a device of the same nature as the *centimes additionels* which is applied to the major taxes levied in France.[113] He remarks that "the income tax has come to stay. With the existence of this new tax there arises the hitherto entirely unsuspected prospect of a state income tax being able to lean up against the federal tax, so as to avail itself of the federal returns and to be able in this way to minimize a great part of the difficulties which would otherwise attach to an independent income tax. . . . The rate of taxation for state or for local purposes should be only

[111] *Dobbins* v. *Com'rs of Erie County*, Supreme Ct. U. S., 1842, 16 Pet. 435.

[112] Bastable, *op. cit.*, pp. 392, 475.

[113] "*Centimes additionels aux principal des quatre contributions directes.*" —J. Caillaux, Les impôts en France, pp. 61–65.

the normal rate."[114] He suggests a one per cent tax for state purposes "or at the outside two per cent" without the progression of the federal tax and with a reduced exemption. The rate per cent and the exemption limit are matters of detail, but the limitation of its operation to the non-progressive portion of the assessment is important, and at first sight appears to be well conceived on the basis of the French precedent. The idea contains a full measure of local option. It could be adopted or not by any state, and the rate could vary in different states. Probably constitutional amendments would be necessary in more than one state.

It is only fair to say that this idea was to some extent foreshadowed by Professor Bullock, who said that "If the federal government continues to tax incomes, as it doubtless will, there will be a positive advantage in assimilating state taxation to federal at this point. . . . It will be possible also for the state and national governments to coöperate to some extent in the assessment of incomes, with the result that more complete and uniform returns can be secured. Instead of introducing complications, the establishment of a federal income tax should facilitate and simplify the administration of state taxes upon incomes."[115]

"The income tax as established, and so far as yet used, is a veritable toy. . . . The mere toy character would not be an indictment of the sincerity of its establishment, if there were any evidence of an intention to use it for the purpose of elasticity. But on the very first occasion for such a use, the recent so-called war taxes, the government turns, not to the income tax, but to new and burdensome internal revenue taxes."[116]

7. *The place of the inheritance tax.*—No adequate appreciation of the significance of inheritance taxes, and of the rapidly growing demand for increased assessment in that direction, is possible without due regard to the part played by a state religion as an economic factor. According to the religious census taken

[114] E. R. A. Seligman, "The Next Step in Tax Reform," Proc. Nat. Tax Assoc., 1915, pp. 136, 138.

[115] C. J. Bullock, *op. cit.*, Bull. Univ. Washington, no. 84, 1914, p. 258.

[116] Plehn, *Government Finance*, pp. 121, 122.

by the federal government in 1906 the total numbers of every conceivable denomination which could by any means be classed as religious only amounted to thirty-eight per cent[117] of the population. Add to this the fact that in this country only, of all civilized peoples, there has never been a state religion, and it becomes easy to understand how so important a factor has been consistently disregarded.

But no nation can live alone, any more than an individual, and the white population of this commonwealth is entirely made up of persons inheriting the traditions and predispositions of peoples whose lives have never in all the ages been previously separated from the economic influences of a state religion. All state religions have exercised a part of the power of the state both directly and by influencing legislation, and few religions have exercised a greater power than the Christian Church as established in Europe. In no direction was this power more in evidence than in the levy of death duties.[118]

When we remember how much of the work now being gradually assumed by the state, causing the demand for increased taxation, was prior to the Reformation efficiently carried out by the church, it is easy to associate the inception of modern taxation with the Reformation. There is an illimitable distance between the death duty levied by the church and the death duties again asserting themselves under the guise of "foundations." The church required unconditional surrender of the property, whereas the modern founder extends the "dead hand" over it. The attitude of the church was exactly that of the modern state in Europe in refusing to recognize any conditions attached by the individual to the surrender of the property, and this must inevitably become the attitude of the governing bodies of this country.

Prior to the Reformation, the church was coördinate with the state, certainly in practice if not theoretically, and therefore

[117] Total population, 84,246,252; total of all religious denominations, 32,936,445. (U. S. Bureau of the Census, *Special Report on Religious Bodies*, 1906, Part I, pp. 42, 43, 71.)

[118] At the date of the Reformation, the church by this means had become absolute owner of one-third of all property in England and probably did not own less in other countries.

any appeal to history which disregards this fact is likely to go wide of the mark. When this factor is taken into account, the modern struggle of the state to share in the administration of the national wealth will be seen to be nothing else than the outcome of the unconscious effort to absorb into the functions of the state, services previously performed by the church. Thus there is nothing at all new in the present inheritance taxes and the coming estate duties. They are merely the inevitable revival of very old forms of taxation allowed to fall into disuse during the orgy of "individualism," an "ism" which properly understood was conceived in a plane far above the perceptions of the school of each-for-himself.

"The demand for a greater diffusion of wealth is directed primarily against the tying-up of funds in the hands of one family; in practice it is only the collateral inheritance which pays a large tax."[119] One state goes to the extreme of inconsistency by exempting realty from the inheritance tax.[120] "The receivers of high incomes are easily seen to be chiefly the children of those of the last generation who received in their time the high incomes of that time. Able members of the poorer class rise and particularly incompetent members of the richest class fall, but there is a continuous hereditary transmission of inequality of income the importance of which it is foolish to ignore."[121] "The right to take property by devise or descent is the creature of the law, and not a natural right—a privilege, and therefore the authority which confers it may impose conditions upon it."[122] "While the laws of all civilized states recognize in every citizen the absolute right to his own earnings and to the enjoyment of his own property and the increase thereof, *during his life,* except so far as the state may require him to contribute his share for public expenses, the right to dispose of his property by will has always been considered purely a creation of statute and within legislative control. . . . We know of no legal principle to prevent the legislature from taking away the right of testamentary

[119] C. B. Fillebrowne, *Taxation,* p. 106.

[120] *Revised Code of Montana,* 1907, sec. 7724.

[121] Cannan, *op. cit.,* p. 208.

[122] *Magonn* v. *Illinois Trust and Savings Bank,* 170 U. S. 288.

disposition or imposing such conditions upon it as may seem conducive to public good.''[123]

It is inequitable to disappoint legitimate expectations. Of course the difficulty here is to say what are legitimate expectations and it is quite hopeless to expect any two persons to agree absolutely as to where legitimate expectations end and where illegitimate expectations begin. It may, however, tend to clarify the conception if we take the common case of an individual who is quite capable of accumulating, but equally incapable of administering wealth. The heir of the accumulator has no more right to expect to administer the wealth of his progenitor than has the son of the Collector of Internal Revenue to expect to become Secretary of the Treasury by divine right, and administer the funds collected by his father on the ground that his father held the office of collector and fulfilled its duties efficiently. The pursuit of this reasonable view to its inevitable conclusion will show us that ''legitimate expectations'' are strictly limited, at the best, to claims on behalf of living dependents of the decedent to maintenance in the same conditions of life as those to which they were accustomed during the lifetime of the testator. The unborn can have no legitimate expectations.

It is expressly set forth in the Declaration of Independence that all are created equal, ''a self evident truth.'' Created, as used there, obviously means born. As no two individuals can ever be born equal in mental or physical capacity, it follows that the only condition to which this Declaration can apply is economic equality, an equality which is approximately possible by the simplest attention to the organization of the affairs of the community. To talk of ''equality of opportunity'' as at present understood is meaningless, unless it includes at least some degree of economic equality. Where it is possible for one youth to commence life with wealth beyond the dreams of his comrade who is in other respects his equal or superior, the talk of equality of opportunity is mere juggling; it is a dishonest setting before the most efficient of a will-o'-the-wisp that will disappear with the dawn of the day of things as they are. It would be better to

[123] *U. S.* v. *Perkins,* 163 U. S. 625, 627.

disown the Declaration of Independence, with the Fourth of July and all that it ought to mean, than to perpetuate a sham.[124]

"Justice, in so far as the action of the state is concerned, consists in holding the balance equal; in giving none an undue advantage. . . . Justice demands that the state should do nothing consciously to increase inequality of wealth."[125] A legal equality which forces an inequality of fortune in the face of inequalities of native ability is a travesty of justice; it is handicapping the superior citizen by making him the servant of the child of the selfish accumulator of a previous generation. Neither the virtue of being a pioneer nor success in appropriating pure profits or economic rent—the ability to do which is after all principally due to the results of the work of countless generations which have passed away[126]—is sufficient to justify the pensioning of one's heirs forever. A pension to an individual may be justifiable on the ground of services rendered, but the

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[124] "It was our boast for more than a century that under our social and governmental system there was equal opportunity for all. . . . At present there are many avenues of success that are practically closed to men of moderate fortune, and that are sealed against young men of ability and energy that must fight the battle of life without adventitious aids."—Rose, *op. cit.*, p. 233.

[125] Seligman, *Progressive Taxation*, p. 70.

[126] "What have I produced alone and unaided? Nothing. Without that organization of society created out of the toil and blood of long generations before my time, I should probably have had nothing but a flint axe and an indifferent hut to call my own; and even those would be mine only so long as no stronger savage came my way."—T. H. Huxley, "The Struggle for Existence," in *Evolution and Ethics* (N. Y., Appleton, 1896), p. 230.

"The best are asking themselves only, 'What can I do in my loyalty and love to repay my university [and equally my country and generation] for the inestimable gifts she has lavished upon me?' "—Address by B. I. Wheeler, at Twentieth annual session of National Association of State Universities, Proceedings, 1915, p. 30.

"The expense of educating a talent is a debt contracted by this talent. From the very fact of its existence, it becomes a debtor to an amount equal to the cost of its production. His talent is collective property for which he did not pay, and for which he is ever in debt."—P. J. Proudhon, *What is Property?* Trans. by Benjamin Tucker (Boston, 1876), pp. 142ff.

"All the wealth he produces, in addition to the wages he pays, has been produced before by the payment of other wages, and the supply of other tools, raw materials, workshops, etc., which he simply refunds when he purchases their products to serve as instruments of his own production, or in other words, whose expenditure he simply takes over."—Maffeo Pantaleoni, *Teoria della pressione tributaria e metodi per misurarla* (Roma, 1887), p. 180.

continuation of its payment to one who was unborn when the services were rendered can never be justified.

The fact is commonly overlooked that the total amount of all taxes must be produced every year as the surplus of production,[127] and it is equally out of this surplus production fund that all pensions and all interest on investments are paid. The property which a rich man leaves is not what is commonly conceived by the peasant—a house and plot of land that will yield shelter and a living to the worker—but the capitalized value of a charge on this surplus production fund, and this charge is just as much a burden on that fund as are pensions and taxes. To pension the man or woman who helped to create the fund is a legitimate charge on the fund, but to confer on his heirs a claim to be a permanent charge on the fund, by virtue of certain book entries, is to pension those descendants for no consideration whatever.[128]

8. *Accidental income.*—The method adopted in Germany of taxing state lotteries is instructive when considering the taxation of accidental income. It might be termed a system of taxing winners only. A tax of five per cent is levied as a franchise tax on the total issue of the lottery, but as half the money is distributed in prizes, the custom is to deduct ten per cent from

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[127] Das grosse Resultat ist dass jede Steuer von jedem auf jedem uberwälzt wird. . . . An die Stelle der unklaren Uberwälzung der Steuern tritt der klare Begriff der Production derselben. . . . Die Gesammtsumme aller Steuern muss alljährlich als Mehrwerth der Production von dem Volke wirklich producirt werden. . . . Das ist der einfache Begriff des Steuerproduction.''—L. v. Stein, *Lehrbuch der Finanzwissenschaft* I (1878), pp. 493–497.

[128] The undesirability of an aristocracy of wealth like the Roman patricians should enter largely into the question of inheritance and estate taxes. The inheritance of large estates begets an aristocracy of wealth. The American aristocracy of wealth—untrammelled by any traditions of civic obligations—will probably be, when fully developed, the worst with which any commonwealth has ever been burdened. Titles are immaterial, but it was undoubtedly the object of the framers of the federal constitution, who were filled with the spiritual exaltation of the latter half of the eighteenth century, to prevent the growth of an aristocracy (see *Constitution of the U. S.*, Art. I, sec. 9, last paragraph).

Hereditary wealth generates the very aristocracy the growth of which the framers of the constitution really desired to prevent. The intention is clear when considered historically in the light of the conditions existing at the time and preceding the drafting of that document. Thus an estate tax steeply graded is not only constitutional—the omission of it is unconstitutional.

all prizes. The faculty of all participants is thus reached, the losers having already contributed in their original subscription. The tax is levied at source on the promoters of the undertaking and they shift its incidence to the prize winners. The process suggests revenue that might be obtained from the various exchanges of the country, leaving the tax to be shifted by the brokers to the clients with a favorable balance.

"Unearned incomes commonly place the recipient in a particularly good position to contribute to the public expense at a relatively small sacrifice."[129] The tax on city property in New York is estimated at about one and one-half per cent per annum, and, in New York City, real estate values increased from 1911 to 1914 two and one-third per cent annually, so that it would appear that the unearned increment paid all the taxes and provided an additional income of five-sixths per cent, to be added to the interest on the investment. Such a condition of affairs fully justifies the statement that "A tax on the increase in land value is in some ways like the inheritance tax, which imposes little burden upon the heirs because the means of paying the tax is in the nature of things already furnished."[130] All accidental income is in the same category. Any person would be glad to qualify for payment of such taxes.

9. *Certain neglected minor sources of revenue.*—In most estimates of revenue occurs the item, "Fines, fees, penalties, etc." There is scope for legitimate increase under this head by a more just assessment.

Quite recently a foreigner who had attained to notoriety on the Pacific coast by traffic in houses of ill-fame was condemned to deportation, but by a curious perversion of equity, was permitted to remain long enough to realize the property in which he had invested his ill-gotten wealth. Only a defective law could have failed to treat such gains similarly to the proceeds of burglaries. The consideration was immoral, and failing in effort to restore the gains to those who could claim them, one would have expected the proceeds to be impounded by the state treasurer

[129] Custis, Bull. Univ. Washington, no. 84, 1914, p. 19.

[130] G. M. Janes, "The Tax on the Increase of Land Values," Bull. Univ. Washington, no. 84, 1914, p. 166.

or perhaps by the federal authorities, for it is well that such profits should not enrich the locality where they are gained. The whole assets of persons engaging in such operations should be treated as trust funds mixed with personal assets, which puts the onus upon the claimant to prove what portion, if any, was acquired by honorable means. It is an open question whether the law as it stands would not warrant this procedure immediately.

Another neglected source of revenue could be enlarged by a very slight alteration of the law, a single clause fixing fines for illegal acts at one or more days' income of the offender. At present the basis is the day's income of the unskilled laborer, so that only the unskilled worker pays according to his faculty and all others are under assessed. Indeed, as the law stands, it might well be held to be an "exeessive fine"[131] to impose upon one person a day's labor or more for an offense which is expiated in the case of another person by only a few minutes' labor. With such a reading it would not be necessary to name the amount of the fine but only the number of days' income, the value being subsequently ascertained by an officer of the court. A category could easily be prepared of different occupations on which an approximate schedule could be based, supplemented by a reference to the tax roll for additional income from unearned sources. In the case of richer persons the assessment would doubtless still fall short of the fact, but the general results would more nearly approximate to justiee than the present unfair system, and the increase in revenue would be appreciable.

The idea would not apply to revenue offenses, such as smuggling, which have no relation to faculty.

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[131] *Constitution of the United States*, Art. VIII.

PART II

CONSTRUCTIVE SUGGESTIONS

CHAPTER I

CO-ORDINATION AND ADJUSTMENT OF TAXES

1. When an American contractor finds his machinery inefficient or unsuitable for the purpose in hand, he wastes no time. If the machinery be past repair or improvement he simply scraps it and calls in the services of an engineer to devise adequate appliances, and straightway places orders for the new outfit. The contractor does not ask the advice of his unskilled laborers and take a vote as to the new machinery, and allow the various suggestions to be formulated according to the designs of men unable to draw correctly and entirely unacquainted with technical requirements; neither does he entrust the scheme to the expert of his rival who would welcome the collapse of the undertaking and a loss on the contract. And yet this is exactly what we do when we call in the initiative as a method of providing new machinery, instead of using it for its real purpose of pointing out a general need and leaving the details to those whose special work it is to consider such things.

The initiative, as the voice of the state, corresponds to the employer of the contractor. The employer merely tells the contractor that the machinery appears to be antiquated and the work is not progressing and that it is necessary for him to hurry. The employer does not enter into the details; he knows what he wants and says so, leaving the contractor to get it done in the most expert manner. Constitutional amendments today are as often as not framed by some unskilled fanatic and put forward by professional agitators without knowledge beyond a standardized declamation, and with no other object in view than the justification of the salary allowed to them by some organization of questionable intent. The financial control of newspapers in

such a way as to exclude from their columns anything which would tend to a correct apprehension of what is necessary for reform, is only one of the methods deliberately adopted to prevent any adequate appeal to the intellect of the people, with the result that the record more frequently shows a vote based on perverted emotion. "To legislate by constitution is to legislate for the benefit of courts and lawyers and against the interests of the people. The constitution should furnish a skeleton of government and not a code of laws."[132]

"The people of the United States have unbounded faith in the efficiency of laws, and the enactment of statutes by thousands and tens of thousands is a favorite national pastime. But too often our interest is confined to the process of getting laws enacted, and careful consideration of the difficult and all-important problems of administration is little to our taste. Therefore we lead the world in our annual output of laws, and lag far behind many other countries in the matter of administration."[133]

2. *Scientific methods essential.*—It is essential then in the first place that steps toward coördination should be considered scientifically. For this purpose the taxes of adjacent states should be compared, as it might be expected that the circumstances of adjacent states would be less likely to differ sufficiently to necessitate different fiscal treatment. Where a tax exists in one of them only, an investigation should be made into the circumstances of its inception, including the history of the state. Should no exceptional circumstances be revealed, it would then be time to review the recognized principles of good taxation and to attempt to account for their failure to apply in this instance. The result might go to show that new conditions had arisen since those principles were generally accepted which call for a modification of the principles. "During the last twenty years the progress of sociological thought has been so rapid that opinions which were then held to be revolutionary now incur the danger of being regarded as commonplace. The small school—

[132] Proc. Nat. Tax Assoc., 1907, p. 56.
Note. It is not clear, however, in what way the courts "benefit" unless an addition to their work be taken as a benefit.

[133] Bullock, Bull. Univ. Washington, no. 84, 1914, p. 230.

then in its infancy—which I named the 'school of solidarity,' and which adopted a line of thought between 'liberalism' on the one hand, and 'collectivism' on the other, has grown to eminence; what was then a small, unfrequented path is now a highway traversed by the masses.''[134] Should the excellence of the exceptional tax be established, its adoption by neighboring states might be urged, and if found defective, it should be scheduled for early revision.

When this process has been applied to adjacent states, inquiry might be directed to a wider area comprising states suitable for grouping. Possibly the classification already adopted for census purposes might be most suitable. It is always desirable in forming groups to adopt an association which has become familiar, but this might not be the best for a matter of taxation; experience would soon reveal the better grouping.

As soon as one state is prepared to take the initiative, invitations should be sent to the governments of other states to appoint commissions to meet for the consideration of points of agreement. Three commissioners—a jurist, an economist, and a treasury official—would probably be effective. No one interested in any large corporation should be appointed, but of course the evidence of such would be valuable statistically at a later stage.

Simultaneously with the work of these commissions, a considerable process of education and reconstruction of viewpoint becomes essential in order to ensure due appreciation of the need for the work done and to be done, and to counteract the ephemeral and purse-directed teachings of a portion of the daily press and of professional lobbyists. ''The indispensable condition of tax reform is the unceasing education of the taxpayer. The average taxpayer today feels, but he does not think. . . . The people must be taught to see, taught to be dissatisfied with what they have, to demand something better, or they will repeal the best law and smash the best machine ever devised.''[135]

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[134] C. Gide, *Principles of Political Economy*, 1904, p. vii.

[135] T. S. Adams, ''Essential Conditions of Tax Reforms,'' Bull. Univ. Washington, no. 84, 1914, pp. 196–97.

3. *Work already done.*—The tendencies of recent years have been summed up under four heads:

"1. Centralization of the assessing authority resulting in the establishment of state-taxing commissions, county boards of review, etc.

"2. Establishment of special taxes for different classes of property or activity, thus abolishing or modifying in some respects the unsatisfactory general property tax.

"3. Separation of the sources of state and local revenue, and the provision for home rule or local option in taxation.

"4. Securing the establishment of the single tax."[136]

The above description is open to criticism in several respects. Home rule has come to be synonymous with the single tax in certain localities and is therefore by no means an alternative term for local option which has been previously considered as the antithesis to a single tax.[137] The description of the last mentioned tendency is also misleading. There are not many persons in this age who are prepared to make out a case for any single tax, but unfortunately in this country the term has come to be incorrectly applied to what is everywhere else known as the taxation of land values. A growing mass of thoughtful men advocate the taxation of land values as part of a scheme of taxation, and their adherents, supporting the so-called "single taxers"—because the programme of the single taxers is principally directed to the taxation of land values—get numbered among the supporters of the idea of a single tax, while their aim is quite different from that of the Physiocrats. "There would seem to be great possibilities for the development of the unearned increment tax within our system. It could be employed as a means of readjusting the burdens of our land tax laying them more heavily upon property of rapidly increasing value and diminishing them on other property."[138] "The experiment of an increment tax would be well worth trying."[139] "The

[136] Proc. Nat. Tax Assoc., 1914, p. 234.

[137] See p. 122.

[138] R. C. Brooks, "New Unearned Increment Taxes in Germany," *Yale Review*, 1907, p. 261.

[139] R. S. Tucker, "British Taxes on Land Values," *Quar. Jour. Econ.*, p. 818, August, 1915.

assessment of real estate is difficult because equity does not require the land to pay according to area, nor according to any special quality, but rather according to its value."[140]

4. *The next steps.*—Where there are existing state tax commissions they might be utilized for the work of coördination immediately. At present their work has been, with few exceptions, confined to their own state without any regard to coördination with neighboring states so that some extension of powers would probably be necessary. One of the principal obstacles is that of expense, but in this the richer states might bear a larger proportion. There are plenty of precedents for allocating the cost of joint conferences between different authorities according to the wealth of each, as expressed by assessable value. We must strive to eliminate the beggar-my-neighbor policy which finds too much favor with misguided individuals. There is no legitimate rivalry between states or cities except the guidance of their governments into the path which shall best promote the happiness of the greatest number of their people, and this end will never be effectually attained at the expense of a neighbor, even though that neighbor be a whole state.

As soon as any important number of states have arrived at an understanding of the advantage to be derived from grouping, the way will be paved for the separation of federal taxes from state taxes, as well as the separation of state taxation from local taxation. Experience has shown that even in that condition it is possible to save expense of double collection in such matters as the projected state and federal income tax by employing a single official and a compound demand note. The separation of the proceeds is a mere matter of bookkeeping. The salary of such official has been found easy of adjustment between the two authorities. It has been said that "owing to the paramount necessity of maintaining untrammeled freedom of commercial intercourse between the citizens of the different states and to the fact that so frequently companies transact both local and

[140] "La repartition de la contribution foncière est difficile par la raison que l'equité ne veut pas qu'un terrain payé en raison de sa dimension, ni d'aucune qualite sensible, mais bien en raison de sa valeur."—J. B. Say, *Cours complet d'économie politique* (ed. 3, Paris, 1852), II, 401.

interstate business, it has been found difficult to define clearly the line where the state and the federal powers meet. That difficulty has been chiefly felt in dealing with questions of taxation."[141] Far from accepting such a statement as discouraging, it should be regarded in precisely the opposite sense. The fact that the difficulty is felt chiefly in matters relating to taxation points to the urgent need for removing the difficulty, a need that would be met almost automatically in the process of coördination.

"In fiscal matters those states now stand at the head which have developed an efficient central control over local action. The sooner all of our American states fall into line with the more advanced commonwealths and develop a centralized control over local revenues and over local accounts, the greater the progress toward efficiency and justice. This I should say is the first great lesson for all of our statesmen to learn."[142] "But we have a still more important and difficult lesson to learn, the lesson that just as local finance must in some respects be subject to state control, so state finance must be subject to central control. The time is fast approaching when it will be impossible as well as unwise to escape federal control of certain taxes essentially interstate in character. In modern times corporate business has transcended state bounds. Incomes are derived from nation-wide sources and the interstate complications connected with inheritances are becoming well-nigh unbearable. It will be well for our state officials to consider carefully how best to adjust the state taxation of corporations, inheritances, and incomes to these newer conditions."[143]

5. *Possible adjustments of state and federal taxation.*—There is, however, one case in which the movement might well be reversed, and that is in the matter of liquor and tobacco licenses and the excise revenue from the same source. These taxes are in European countries gradually being recognized as essentially local, and where they are collected for convenience by the federal

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[141] *Erie Railroad Co.* v. *Pennsylvania*, 158 U. S. 437.

[142] Address of the President, Proc. Nat. Tax Assoc., 1914, p. 192.

[143] Seligman, Proc. Nat. Tax Assoc., 1914, p. 193.

Note. The contributions toward the solution of this problem since made by Professor Seligman and Professor Bullock have already been referred to on pp. 181, 182.

authority, the proceeds are redistributed to a considerable extent among the subsidiary governments. This result has not been brought about by any considerable local demand or public argument in its favor, but has gradually commended itself as a matter of administration coincidently with the development of local government. There is nothing whatever of an interstate nature in such matters, while on the other hand, income tax and estate duties can never be satisfactorily levied except by or with the coöperation of the federal government. Sooner or later it will be found inevitable that the taxation of interstate corporations as regards their franchises and income must be relegated to the federal government, if not for revenue, certainly for administration. In any case the states and local authorities would retain the tax on the real estate occupied by the undertakings of these corporations, as that area would otherwise be a deduction from the assessable value of the district. (The taxation of real estate as such can never be shown to be a matter which concerns bodies outside the locality.)[144] In the case of a car company it has been held to be "a just and equitable method of assessment to take as a basis such proportion of the capital stock of a company as the number of miles over which it ran cars within a state, bore to the whole number of miles in that and other states over which its cars were run; and if this method were adopted by all states through which these cars ran the company would be assessed upon the whole value of its capital stock and no more."[145] Economic and business life in the United States has become national life and has transcended state boundaries. Any attempt by a single state to run against this current is doomed to failure.

"We are rather held in check by constitutional restrictions, but if there were some general plan, some specific line of taxa-

[144] It may be of interest to note that in England, in addition to imperial taxation, railways are assessed frequently at $20,000 to $30,000 *annual value* per mile of track of main line, in country districts. This would be equivalent—on a 6% basis—to an assessment of $350,000 to $500,000 per mile to the general property tax. Although an assessment of the occupation of real estate, the basis of valuation really includes what would here be regarded as an element of franchise value in addition. The facts are useful for a comparison of burdens.

[145] *Pullman's Palace Car Co.* v. *Pennsylvania*, 141 U. S. 18.

tion laid out that was followed by states by which we are surrounded, we believe we could present our needs much more forcibly and effectively to our legislature than we can where we simply shoot at a mark trusting to strike something that is available and valuable.''[146] If it be true that a government which does not possess a fixed invariable system of taxation is like a planter who is continually changing his methods, but whose land, in the meantime produces nothing, the same argument will apply to a constant variation in taxation between state and state, and city and city.[147]

''There are interesting questions in regard to the inheritance tax. One of them is, whether the money collected should be regarded as spending money, or whether it should be hoarded and invested so as not to reduce society's capital accumulations.''[148] Certainly the sinking fund for the purchase price of railways would be an unobjectionable application. At present, however, the inheritance tax, like the income tax, is a ''mere toy.''[149]

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[146] E. H. Wolcott, Proc. Nat. Tax Assoc., 1914, p. 202.

[147] Canard, *op. cit.*, p. 198: ''Un gouvernement qui n'a pas une manière fixé et invariable d'impositions, ressemble à un propriétaire qui, après avoir fait une plantation, s'en dégoute, la change pour une autre, et celui-ci pour une autre encore; pendant se temps la terre ne produit rien.''

[148] Plehn, Government Finance, p. 148.

[149] *Ibid.*, p. 80. A table given by Professor H. A. Millis (''The Inheritance Tax in the American Commonwealths,'' *Quar. Jour. Econ.*, p. 308, February, 1905), reveals the insignificant character of the tax so far. He compares the per capita yield with that of European states, remarking that ''the explanation is found in the more drastic character of the inheritance legislation and the superior administration in foreign countries.'' He, however, fails to comment upon the curious result of a comparison of New York state with the United Kingdom, the former showing a yield of 12.01 per cent of the total revenue and the latter only 9.97. Were New York's proportion of federal revenue taken into account to make the comparison just, the percentage raised from inheritance tax in New York state would shrink to a little over three per cent, or one-third of the percentage of the United Kingdom,

CHAPTER II

VALUATION AND ASSESSMENT

1. *Defective assessment.*—Having determined upon some sort of coördination as regards objects of taxation we are confronted with the need for similar action with regard to methods of assessment. "It is obvious that, where taxation is upon property that requires valuation, inequality of taxation is produced as surely by inequality of valuation as by inequality of the rate of tax."[150] Nearly every case having for its cause an allegation of inequality of taxation is based upon the nature of the tax rather than upon the valuation.

According to Professor Adams of Wisconsin, "personal property of taxpayers worth $1000 was found to be assessed at sixty per cent of its true value whilst personal property of taxpayers worth more than $500,000 was assessed at only seventeen per cent of its true value."[151] The court having decided that "the value of property results from the use to which it is put,"[152] many persons—and perhaps some assessors—without proceeding to read the context of the decision, conclude that if it is put to no use whatever, it has no value for purposes of assessment—a doctrine in high favor with those accustomed to grow rich while they sleep.

Land held out of use in anticipation of a rise in value has to appear on the assessment roll somewhere, but usually the value set upon it is absurdly low until a sale takes place, while there can be no question that it is all the time being put to the use which might properly be described as forestalling the purchaser, a use which is only suddenly revealed at the moment of sale.[153] The ordinary taxpayer grumbles at the rate of taxation;

[150] *People* v. *Weaver,* 100 U. S. 538.

[151] Bull. Univ. Washington, no. 84, 1914, p. 198.

[152] *Cleveland Ry. Co.* v. *Backus,* 154 U. S. 445.

[153] "I am convinced from personal examination of actual sales values, as compared with the assessed values extending over several years that unusually high assessments in special cases, irregularity everywhere,

only with the greatest difficulty can he be brought even momentarily to perceive that the greatness of the rate is due far less to extravagance in expenditure than to underassessment of his neighbors who are growing rich through his exertions. Curiously enough, nothing appeals to him more readily than the sophistry that if the property be not in active use at the time it should be very lightly assessed. He is easily led to think that if the property has its valuation raised at and from the moment when it is brought into visible revenue-producing activity, that will suffice. In order to reach the faculty of the owner, one must have regard to a rise in value—let us say from $1000 to $5000 in ten years, which is equivalent to an average income of $400 per annum saved during the whole period; or allowing ten per cent for interest on the original investment as a deduction from the income, the lesser sum of $300 per annum would require to be capitalized as a ten years' annuity, and taxes levied each year on the capital value so obtained. In practice the calculation would not be quite so simple, but somewhere near the same aggregate result should be obtained. The discrepancy might be met in another way by an enactment on the lines of the Indiana law which holds administrators responsible for taxes unpaid during the lifetime of decedent. Following that principle an occasion might be provided for reducing the sale price by the amount of unpaid tax due to the property having been "grossly undervalued." Such an enactment has been held to be constitutional for any occasion.[154]

The late mayor of Piedmont recently said at a public meeting that land held up in large blocks by powerful interests, is sometimes assessed at only fifteen per cent of the value for which it is subsequently sold. To treat such cases on the annuity principle just suggested would be in accordance with the decision that "the value varies with the profitableness of the use present and prospective, actual and *anticipated.*"[155] Thus faculty be-

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and general tendency toward over assessment of the small cheap tracts are prevailing conditions. . . . The man with almost nine times as much property pays only three times as much tax."—E. I. Benton, Taxation in Kansas, Johns Hopkins Univ. Studies Hist. Pol. Sci., ser. 18, no. 3, 1900, pp. 153–55.

[154] *Covington* v. *Kentucky,* 173 U. S. 231.

[155] *Cleveland Ry. Co.,* v. *Backus,* 154 U. S. 445.

comes the equivalent of capacity, not depending upon any skill of the owner but simply upon his intention. "It is a cardinal rule that whatever property is worth for the purpose of income and sale, it is also worth for the purpose of taxation."[156]

2. *Value for taxation.*—An excellent practice obtained in the canton of Zurich as far back as the sixteenth century: In the town of Elgg, if the magistrate and the council were of opinion that anyone had, under oath, returned his property at too low a figure, any citizen whosoever might "seize and purchase" the property at the price returned.[157] This idea is also alleged to have been appropriated in some New Zealand or Australian places, but it more probably resulted there from the working out of the doctrine of "tax and buy" proposed by the late Alfred Russell Wallace, who advocated that the state or local authority should have the right to acquire any property at the valuation placed upon it by its owner for the purpose of taxation. No equitable objection can be urged against such a proposition, as the arrangement would have the advantage of ensuring a correct valuation with little intervention of assessors; everyone would become his own valuer. At present an enormous amount of energy is wasted on schemes of assessment, unit systems and the like, which are all devised on the assumption that people are generally dishonest, a proposition very far from the facts.

The correct valuation for purposes of taxation is what a person would accept from a purchaser. There is very little property—real estate at any rate—which is not for sale at a certain price, a price which can usually be ascertained from the selling agent. If the property has to the owner a value beyond what might be considered its intrinsic value, then it must be worth while to pay taxes on that higher value to insure undisturbed possession. It would be a cheap form of insurance when com-

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[156] *Adams Express Co.* v. *Ohio*, 166 U. S. 220.

[157] Herrschaftsrecht von Elgg, 1535, Art. 56, §5: "Wenn Vogt und Rathe meinen, es habe einer auf Eid sein Vermögen zu niedrig angegeben, so darf jeglicher Bürger das Gut um den angegebenen Betrag 'an sich ziehen und erkaufen'."

A similar provision has existed in the laws of the German city of Stendal since the year 1345. "Für so viel Mark als ein Bürger sein Gut verschosst, kann der Rath es behalten."—K. H. Lang, *Historische Entwicklung der teutschen Steuerverfassungen*, 1793, p. 168.

pared with the expenditure on law suits and otherwise which people will incur simply to retain uninjured the exceptional amenities of certain property. The objections arise from two sources: firstly, the novelty—all proposals of unique justice in all ages have appeared ludicrous when they conflict with custom; and secondly, the desire of certain persons to continue to avail themselves of the loopholes afforded by the present system for evading their just share of responsibility.''[158] The first difficulty will disappear with reiteration and explanation. Humanity is like a country horse seeing for the first time a street car; he is maddened with fright by reason of the novelty, but careful handling will accustom him in the course of a few days to face it with indifference. The second difficulty can safely be ignored, but yet one must not overlook the fact that those who have most to gain by the present system have already reaped large gains which they will use ruthlessly in propaganda designed to mislead.

3. *Need for progressive taxation to compensate underassessment of large holdings.*—Under the present system it will be found that the larger the holding, the lower the relative assessment, by which means regressive taxation is secured in a simpler manner. It is doubtful if all the steps which have yet been

[158] On Nov. 1, 1854, the *Alta*, a San Francisco newspaper, published a list of the principal taxpayers in San Francisco in that year, making the following illuminating introductory note:

''We have prepared below a list of those persons whose names are given in the tax assessor's books as paying the heaviest sums of taxes. It must be remembered that the assessor's books are not reliable as a source of information with regard to the actual wealth of individuals. Some persons give in their property at much less than its value, to defraud the government out of as much of the taxes as possible. Others are taxed with property which they owned a year ago, but which has been sold since, while they have become bankrupt; others are taxed with lots and buildings which are under mortgage for more than they are worth.''

More recently, Mr. S. T. Bledsoe, counsel for Wells Fargo and Co. Express, has made the following remarks upon the same subject: ''Of the several methods mentioned, that of assessment by local assessors is least efficient. In those cases where local boards have been authorized to assess upon the unit basis, the results have been but little more satisfactory. Such boards are frequently influenced by local conditions and are thereby impelled to impose a larger share of the burdens of taxation than is just on corporations and public service companies which have no vote and are therefore so far as the local assessors are concerned unable to effectively protest such wrongful action.''—Proc. Nat. Tax Assoc., 1914, p. 22.

taken in the direction of progressive taxation have counteracted this condition. If there were no other reason for progressive taxation, this fact alone would supply ample ground for its adoption. "Nothing is practical, nothing is right and just but the use of 'full value.'"[159] "The competition between local assessors to cut down the burden of state taxes results in assessments contrary to law, at a small percentage of the true value of property, and inequalities of local assessments are sure to follow. When assessments are made at a percentage of full value inequalities may exist without being apparent. Some property may be assessed at only twenty-five per cent of what it is worth without attracting much notice and the other property may be assessed at seventy-five per cent of the sum for which it would sell without the injustice attracting the attention even of the owner. Assessment, as the law directs, at the full value of the property is absolutely essential to secure equality."[160]

4. *Federal control of assessment.*—"What we primarily need is federal control of assessment."[161] Professor Plehn, in his Report to the Special Tax Commissioners of the State of Kentucky, suggested a strong permanent state tax commission with assessors responsible only to that commission; civil service rules and the removal of the assessors as far as possible from political influences. He would secure a similar condition for the tax commissioners by having them appointed by the governor of the state for a term of eight years, retiring in such order that no one governor could effect a radical change. "The salaries of the tax commissioners should be large enough to command the entire time of very able men." He would have the assessors removable for cause, but ordinarily appointed for life. They should be eligible for promotion from the less to the more remunerative districts, and "everything should be done to make the office a life career, and not a casual employment."

The idea of promotion from the less to the more remunerative districts is reminiscent of the English system where an official known as a surveyor of taxes, is employed by the im-

[159] Plehn, Bull. Univ. Washington, 1914, p. 216.

[160] Lawson Purdy, Proc. Nat. Tax Assoc., 1907, p. 57.

[161] T. S. Adams, Proc. Nat. Tax Assoc., 1914, p. 199.

perial government to coöperate in the adjustment of income tax assessments and the local assessment of real estate. The surveyors of taxes are an exceptionally competent and impartial body of men, appointed for life, usually from university graduates in honors after a supplemental open competition. They remain about three years in one district. As the fiscal arrangements in England combine the functions of the American state with that of the federal government the surveyor of taxes would offer an example for the proposal of either Professor Adams or Professor Plehn.[162] Probably they had this in mind when working the matter out. "The districts of the assessors should be large enough to warrant paying a good man to give all his time and life to the work."[163]

5. *Public interest in valuation.*—However much of a confidential nature may be brought into the assessment of business profits no such restraint operates in the matter of real estate, the valuations of which should be subject to close public scrutiny and repeated adjustment on personal objections of the taxpayers concerned or of neighbors who think they are bearing excessive burdens. Constant vigilance is the price of equality no less than of liberty. When a fair basis has been arrived at and appeals reduced to a minimum and all appears to be in working order, it is not safe to sit still for more than a year or two, or "human nature" will get to work again. Consequently voluntary taxpayers' associations are a necessity in most localities to see that the machine keeps to the rails. The daily press might render assistance in this matter if a little space could be spared from the extravagant allotment given to police and society affairs.

Reforms are not brought about suddenly, but by persistence in working towards an ideal which inevitably becomes deflected to right or left as we proceed, by the evolution of events which can never be foreseen for even a few days, at best a few years.

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[162] The change of location of a surveyor of taxes answers a double purpose; the official never remains long enough to become unduly friendly with any taxpayer, and he carries his experience from district to district, which tends to coördination. There is an old proverb that "a new broom sweeps clean" and an official freshly arrived and full of experience sees many things which might otherwise be overlooked.

[163] Plehn, *Government Finance,* p. 133.

Still the ideal persists if based on equity, but our course toward it is like a three hours' walk in the direction of the sun, apparently in a straight line but actually in a curve. One of the best features of any tax system therefore is susceptibility to easy modification, and one of the worst is a condition of crystallization. "The evil of bad taxation is not merely economic, it is moral, and no argument can change its character."[164]

6. *The unwisdom of excessive penalties for evasion.*—The assessment of personal property for the general property tax is generally admitted to have become a farce, and yet we find some states still struggling with the medieval idea that the increase of penalties will improve matters.[165] "Public opinion seems to justify the passage of statutes, upon the enforcement of which that same public opinion does not insist."[166] It is far better to enact a reasonable penalty—in fiscal matters, always a money penalty—and enforce it in every possible case, than to attempt to terrorize by "examples." Nothing tends so much as the enactment of excessive penalties to facilitate the blackmailing of the most conscientious—and therefore the best—citizens, and to drive the more unscrupulous to fresh devices for evading the law.[167] "If citizens generally could believe that they are being taxed fairly, few would seek to evade the payment of their due share, but no one can be blamed who wishes to avoid paying more in proportion than his neighbors *in the same class.*"[168] Unfortunately, some persons are in a class by themselves and overlook the fact. Few more pitiful exhibitions have been made than the efforts to escape the payment of income tax by those who have been especially favored by the institutions of

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[164] Wells, *op. cit.*, p. 9.

[165] In Pennsylvania the penalty for a false return of personal property is a fine of $500 and imprisonment up to seven years.—Session Laws of Pennsylvania prior to 1913.

[166] F. J. Goodnow, *City Government in the United States* (New York, Century, 1906), p. 232.

[167] In a certain town a judge inflicted a punishment of five years' imprisonment on a man who obtained refreshment to the value of four cents when unable to pay for it (the offense being a second one). The idea of the jury in bringing in a verdict of guilty was twenty-one days' imprisonment. For years afterwards no jury before that judge would convict any person of any offense short of red-handed murder.

[168] Report of Special Tax Commission of the State of New York, 1907, p. 8.

the country. "One discovers that many a man who plumes himself on the soundness of his Christianity is but too ready to shift his just burden to the shoulders of the weak and defenseless; that many a one who figures in the list of donors to charitable and philanthropic institutions, gives, after all, only a part of what he has withheld from the public treasury. On the other hand, it is encouraging to find rare instances of men of wealth who do not avail themselves of the means at their command to evade taxes."[169] Tradition is always stronger than any fear of punishment. There is no civic lever so strong as healthy tradition.

7. *Education of taxpayers.*—"To educate we must have facts. The kind of facts that tell, that leave a dent on the voter's consciousness, are not easy to secure, or at least they require time and industry to secure and collate. . . . Tax reform calls above all things for breadth of vision. It is affected by and in return affects every social factor, every social institution."[170] Two of the most serious defects of vision arise from the dislike of direct taxation and the intoxicating effect of the stupendous. The dislike of direct taxation is engendered by the same weakness which induces people to acquiesce in the payment of high interest if it be included in installments, or to prefer a running account at the corner grocery store (frequently leading to extravagance) rather than cash payments of less amount. A government is driven to avail itself of this weakness from political motives, and the poor "love to have it so," and therefore remain poor through ignorance.[171] It is the duty of the educator to diminish this governmental need. Dr. Slater says that "In 1816, politicians had

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[169] Ely, *op. cit.*, p. vii.

[170] T. S. Adams, *op. cit.*, Bull. Univ. Washington, no. 84, 1914, pp. 201, 208.

[171] "The poor and the deceitful man meet together."—Proverbs, 29. 13.

"There are but few things that hinder one more than to be in debt or to labor under any serious financial embarrassment. It not infrequently undermines principles."—G. R. Rose, *Addresses and Memoir of U. M. Rose* (Chicago, G. I. Jones, 1914), p. 357.

"A uniform tax on quantity inevitably takes more out of the pockets of the consumer than it puts into the hands of the tax collector."—Seligman, *Shifting and Incidence of Taxation*, p. 224.

"*Impôts les plus iniques: les impôts de consummation!*—Menier, *op. cit.*, p. 446.

even succeeded in obtaining excited meetings against the income tax among the laborers earning six shillings [$1.50] per week."[172] Equally absurd propaganda find a footing in the present day among the propertyless voters of this country. "Nor is it desirable that citizens should continue ignorant in those matters. If citizenship has in it, as most of us believe it has, some desirable possibilities in developing the human race, then for a government to abet, encourage, or build upon the ignorance of its citizens in such a matter is as evil and vicious as for a despotism to abet, encourage or build upon the general ignorance of the masses of its subjects. It is not a good thing that people should be paying dollars in taxation while having a befogged idea that they are paying cents. Let them know they are paying dollars and their interest in the manner of spending will be aroused. This is not always to the taste of some politicians; but it will be of advantage to the body politic. Nor is it a good thing that the cheerfulness with which a citizen pays a quarter dollar for a fifteen-cent article should be based upon a belief that the foreigner pays the difference. The ignorance of taxpayers is not a justification of indirect taxes, but an explanation of their general acceptance."[173]

In a very recent book[174] a list of twenty-one "weaknesses" of the American citizen is set forth, and a straw vote of representative men has placed easily at the head of the list "worship of bigness, deference to material success." Such an admission indicates that one of the most important steps to be taken in fiscal education is to devise a method of counteracting the effects of the enjoyment of the spectacular in an illegitimate way, a way which operates to divert attention from the real inequalities of taxation. The phenomenon of wonder has been aptly described as the effect of novelty on ignorance, and when one reflects on the large extent to which American electors have been recruited from that portion of the inhabitants of European countries which is unable to maintain a mental balance in the

[172] G. Slater, *The Making of Modern England* (London, Constable, 1913), p. 18.

[173] R. Jones, *Nature and Principles of Taxation*, p. 208.

[174] C. S. Cooper, *American Ideals*, Garden City, Doubleday, 1916.

face of the stupendous, it is easy to realize how taxation according to faculty can be made to appear unjust by astute propagandists, simply by reason of the enormous sums which become due from the very rich. Even cultured persons sometimes fail to grasp the true significance of the facts, when the statement is made that "it doesn't seem quite fair that the burden of the individual tax should rest upon such an extremely small proportion of the population of this great country,"[175] disregarding the corollary that it is equally unfair that so large a proportion of the wealth of this great country should be controlled by such an extremely small proportion of the population. A single American citizen at the present time is reputed to hold by some sort of a title an estate of one and a half million acres in Mexico. The political party just recognized as sovereign in that distracted country proposes the modest tax of fifty cents per acre, but when this is seen to work out in a demand for $750,000 from one individual, persons who are not appalled by the size of the estate are easily brought to sympathize with the potential taxpayer, while readily paying a tax of double fifty cents per acre on their own tiny holding. Large taxpayers have been known to evoke the sympathies of a public meeting by a recital of their tax contributions, posing as semi-philanthropists until someone inquires as to their faculty.

8. *Taxes of owners of real estate.*—"Taxes on personal property seem to be most favored by the poorer portion of the community under the supposition that in some way they are hurting the selfish rich, whereas the more selfish the rich man, the more readily will he resort to every expedient and device to escape. Thus a system which is supposed by its advocates to be founded on equality really rests largely on the borrowing business man and the dependent classes, and instead of being, as it is called, taxation according to ability, may almost be described as taxation according to vulnerability."[176] Thus one is not surprised

[175] K. K. Kennan, Proc. Nat. Tax Assoc., 1914, p. 317. The remark was in reference to the lowering of the income tax exemption. Whether it is low enough or not is an open question, but it should not be overlooked that the elasticity of the tax is provided by that process as well as by an increase of rate, and the margin of elasticity should be large, for emergencies.

[176] Swan, *op. cit.*, p. 63.

to find in a Supplemental Report of the Special Tax Commission of the State of New York, the statement that "the heavy burden upon real estate, which heretofore has borne the greatest share of the government, has been rapidly increasing and will soon become unbearable."[177] In a well known case it was stated from the bench that "if assessed valuations upon buildings and improvements upon personal property be stricken from assessments and taxes levied only on owners of land, the burden would speedily become insufferable and land would cease to be worth owning."[178] It should have been added "at the present price." Otherwise it follows that if rent be paid to the full value, the land is not worth occupying; whereas both questions depend upon the extent to which the anticipated increase of value has been capitalized in the price paid by the present owner.

The aggregate revenue receipts of the national government, states, counties and incorporated places having a population of 2500 and over in 1913, was 2799 million dollars, toward which the general property tax contributed 1082 millions; in this latter sum was included the tax on personal property amounting to about one-fifth of the whole, so that real estate, far from bearing "the greater share of the government," bore less than one-third (eight hundred and odd millions out of 2799 millions), and yet real estate constitutes nearly sixty per cent of the national wealth![179]

This apparent digression leads to a very serious problem which would seem to be appropriately introduced here rather than earlier. There are two parties wrongly brought together in the complaint about the assessment of real estate. One party consists of those who have made unjustifiable profits out of dealings in real estate and are anxious to continue doing so, and the other party consists of the victims of the former. It is essential to separate these two parties and to show the latter that their interests are opposed to the interests of those who sold to them. There must be some reason for the provision in the laws of so

[177] Report, 1907, p. 44.

[178] *Wells* v. *Hyattsville*, Maryland Court of Appeals, 1893.

[179] The figures are taken from the Special Report on *Wealth, Debt, and Taxation*, U. S. Bureau of the Census, 1915.

many states for the assessment of property at only a fraction, sometimes only one-fifth, of its true value. The reason was doubtless in mind at the time and has been lost sight of. It will probably be found in the fact of so many holders of real estate having acquired their land at unjustifiable prices. As an instance, the value set upon urban land in California for sale purposes is often thirty times the price of land similarly situated (as regards population and business) in Europe, and throughout the state many of the small farms were acquired at five times their true value. The true value is what it will feteh in "open market." The market for real estate is secret. That is why auction prices are usually about one-half of the dealer's estimate, or the price which a valuer, misled by the fictions that have been established, would set upon the property.

One reason why open market has not hitherto been favored in this country has been the difficulty of bringing the would-be buyers together simultaneously, owing to the preliminary sparse distribution of the people. What is the proeess of the establishment of these fietitious values? A corporation acquires a large tract of land and improves and subdivides it. Let us assume the original value was fifteen dollars per aere; the improvements might justify a price of one hundred dollars, which would leave a very large margin for expenses and profit, but the prices asked and obtained—in a limited number of instances—run from four hundred to four thousand dollars. Facts technically true, but grossly misleading, are eirculated, and appeals are made to the eupidity of the buyer, who is usually a peasant for the first time in possession of money beyond the dreams of his aneestors. He has wandered across the continent occupying different farms and saving money, and imagining there is no limit to this process—like the amateur stock speculator who first visualizes paper profits—he falls an easy prey to the unserupulous subdivider who can always instance a previous purchaser who has already resold at a profit. More frequently the buyer is a meehanic, who for the first time in the history of his family has been able to save money, and he is deluded into paying a deposit and mortgaging his earnings for years to come. A few lots sold at

high prices get the corporation "out of the wood" so far as this subdivision is concerned, and they transfer operations and advertising apparatus to a new field. The boom breaks in the deserted subdivision, but the corporation refuses to auction the remaining land or to sell at any lower price, while those who have already purchased find no one to take their lots off their hands at anything near the price they paid, and they can neither build on the land nor work it at a profit while they are isolated by large unoccupied tracts expected some day to "ripen"—tracts which the corporation can easily afford to hold after having cleared all their outlay on the few lots sold to the unwary. The unsold land obtains a reflected fictitious value and is easily used for collateral security on that basis so that the process can be continued until the day of reckoning arrives. Meanwhile the large holders who have profited retain immense tracts and numberless potential "lots" at a low rate of assessment while their victims acutely feel the burden of taxation.

It is of course open to question whether any of the parties concerned have ever analyzed their motives or the consequences, or have acted otherwise than according to a sort of blind instinct in the hope of gain, but the fiscal results are extremely serious. Pending the adjustment of values, by the ultimate establishment of open market, the efforts of the fiscal expert should be directed to unearthing the faculty of those who have gone off with the plunder. The subdivider occupies the position of the ground landlord in Europe, but instead of being openly revealed in that light he shifts the responsibility to the mortgagee. The owner and mortgagee would appear to be in the same position as regards taxation. If therefore taxation is to be arrested, or relatively lightened, to meet the need of those unfortunate ones who are faced with eventual loss, it must be in the first place by raising the taxes on unsold land, and secondly by tracing to its lair the corporation which has produced the difficulty—however inadvertently. The fiscal expert is concerned with facts, not with motives. The latter operation is obviously interstate, but it is to the interest of the people of every state who have the welfare of their state at heart, to coöperate with other states or with the

federal authorities in this work which is of vital importance to coördination.

If the facts are not as stated, then there is no case for the genuine grumblers in the ranks of real estate holders. If the facts are as stated, let them "come out from amongst them" and throw their influence on the other side. The faculty most certainly was in the land; and if it has ceased to reside in the present holder of the land, then it has been transferred and undoubtedly rests in the hands of those who had previous dealings with the land, those who capitalized an anticipated income far in advance and included the price in that asked of the purchaser, who has thus acquired the equivalent of watered stock. If ever this matter is to be fairly dealt with, the dealers in real estate must be separated from the genuine occupiers.

CHAPTER III

COLLECTION OF TAXES

1. *The faculty of the fortunate.*—"Two men earn equal amounts because they are of about equal ability and industry and work at the same trade; they save equal amounts, and invest with what good authorities would call equal judgment, but the investment of the one turns out fortunate and that of the other unfortunate. The one becomes rich and the other remains poor."[180] There should be some method of meeting the claims of those who have been unfortunate, either by reducing their taxation, or not increasing it in the way it would otherwise have been increased, and at the same time bringing in a neglected faculty, the faculty of the fortunate. "The mere continuance of prosperity is likely to increase the inequality of incomes resulting from inequality of inheritance."[181] The appropriators of the unearned increment of land make their best objection to special taxation when they point to the fact that there are other sorts of unearned increment. The tax on unearned increment of land has already been successfully applied in Germany and its proceeds satisfactorily allocated between the federal and state governments, but until the advent of the war it was supposed to be very difficult to meet the objection of the landowners that other unearned increment escaped. The war has, however, demonstrated not only that industries can be quite easily nationalized when there is the will to do so, but that there are available methods of taxing the unearned increment of any undertaking. Only the will was lacking, and necessity stimulated that. Taxes on exceptional profits have been levied by the simple expedient of taking as much as eighty per cent of the additional profits that have accrued since the outbreak of the

[180] Cannan, *op. cit.*, p. 187.

Note. But of course everyone knows that a loser is guilty of "rash and hazardous speculation," while a winner in the same affair is credited with "judicious investment."

[181] *Ibid.*, p. 184.

war, such profits being ascertained by comparing the profits of 1913–14 with those made since. The lessons of the war will considerably facilitate the progress of fiscal reform. Landowners must now be congratulating themselves on having got off cheaply with a maximum levy of thirty per cent; so one may next expect the business people to draw attention to this discrepancy between what they are paying and the charge on the same results from land. Between the two, much progress should result in reaching the faculty of the fortunate. It is scarcely likely that this country will lag behind, when the needs are coming forward with such rapidity through the curtailment of the internal revenue by the work of the prohibitionists and the increase of expenditure due to the war.

There is no question as to the best method of meeting the latter call. It will be by an estate duty levied by the federal government, against which the inheritance taxes of the states can lean, as the state income tax will lean against the federal income tax under Professor Seligman's scheme. The expenditure being so essentially for the defense of the estate the equity of the method requires no second thought.

2. *Present-day difficulties not those of eighteenth century America.*—There was a time when it was the fashion to declaim against any taxes requiring the production of books or any inquiry as to the profits of an undertaking. Today not only has a more scientific spirit taken root, but the composition of the population has undergone an immense change. The principles of these taxes have made themselves acceptable to the majority in numbers and intellect, and any outcry against interference with the license of the wealthy—dignifying it, for the purpose of propaganda, with the name of liberty—can safely be disregarded as merely oratorical flamboyancy.

The perfect collection of these taxes is impossible, but experience in collection will cause rapid improvement in results. A low rate to commence with, has been demonstrated by more than one tax commission to be the most efficacious method of procedure. Coupled with a modest assessment, this will ensure the permanence of the tax and in that sense an old tax becomes

a good tax. Assessments of income tax which admit of doubt, can be raised year by year until an appeal indicates that the actual figures have been nearly reached. The estate tax is an easier matter when made national.

3. *Supplementary methods of collection.*—The essential element in the collection of an increment tax is the requirement of an embossed stamp on all transfers of real property, the amount usually being collected in the first instance from a disinterested party—the attorney or other person who is paid for preparing the deed of transfer. An official skilled in detecting the "operative words" marks the amount of the stamp required and another official affixes it, on receipt of the amount indicated. Only those who have watched the process can conceive the rapidity and accuracy with which this function is performed by experienced permanent officials. The childish method of evasion which now prevails in the insertion of a nominal consideration, would reveal its futility when the seller at a subsequent transaction, or his executors, had to pay the duty on the difference between the nominal sum and the then value.

"A two-fold evolution is now going on in state taxation. There is a movement in the first place to drop real estate from the list of state taxes and to remit it wholly to the lesser political subdivisions, the cities, towns and counties. There is also a movement to discontinue the attempt to tax floating capital, money at interest and the like, and to look only to those things which can be always found and which cannot get away, for the revenue of the state proper."[182] It is more than twenty-five years since this observation was made and it has proved correct. "The British system of local taxation, like the French, Belgian and German, has come to be based on the assessment of comparatively few objects and the avoidance in assessment, to the greatest possible extent,, of all personal inquisition and arbitrary treatment."[183] "There is a certain logical order of taxes resulting from the division of government into federal, state, and local. That order is: indirect taxes for the federal government, with

[182] Luigi Cossa, *op. cit.*, p. 62.

[183] Wells, *op. cit.*, p. 453.

an income tax for great emergencies; income and inheritance taxes for the states; general property taxes for the counties, districts, towns, and cities."[184] But events move fast, and the needs of the federal government will increase very rapidly in the next few years. Meanwhile improved education will cause a distaste for indirect taxes; the tendency is all toward estate duties, taxes on interstate franchises, with a vastly enlarged significance given to that term, and taxes on accidental income. The movement toward these is very marked in Europe and also in this country, and the pace will be accelerated after the war, whether we increase the European influence by permitting a great immigration or whether we close the doors and permanently adopt "preparedness."

4. *Causes operating to hasten coördination.*—History reveals nothing more clearly than the fact that epoch-making events are rarely brought about by direct action. There is always a period of permeation of ideas; then suddenly some incident, usually totally unconnected with the efforts of those who may have been actively preparing for change, appeals to the public imagination, and a result occurs largely governed by the previous permeation but deflected in an unanticipated direction. The end ultimately attained is the resultant of the two forces and another which never slumbers—the individual interests of those alert, selfish beings who are never absent from any field of action, and who under devious devices, generally the exploitation of patriotic sentiment, contrive to extract profit for themselves out of either the prosperity or the troubles of others.

Thus while coördination of taxation has not attained to prominence in the activities of statesmen, the factors which emphasize the need for the study are everywhere accumulating in connection with other movements out of which direct action may emerge at any moment. Whenever a drummer makes known inconsistencies that have inconvenienced his business, whenever an investor is induced to transfer his business to a locality in which the laws applicable to him are more favorable, whenever a newcomer to any locality is moved to cry out at the tax condi-

[184] Plehn, *Government Finance*, p. 150.

tions which differ from those to which he has been accustomed, a channel is unconsciously cut into which human conduct will be diverted under some widely different influence. From all the possible sources of awakening, none are more likely to operate than the acquisition of public utilities by governing authorities on behalf of the public, foremost among which is the almost inevitable federalization of the railways—an event provided for by the constitution.[185] We already have a Vanderbilt system, a Gould system, a Harriman system, and a Hill system, with an ever present effort toward a still closer consolidation. It is but a short step to a United States system, and it could scarcely be effected with greater cost to the public than the consolidations hitherto made.

Another operating cause is the increase of public expenditure, which goes on perpetually, and is not likely to be arrested. "Government expenditure is far more wisely done, on any view of wisdom, than the average of private expenditure. There is no getting away from the inference that a progressive transfer of more and more of the national income from individual to collective channels would result in a positive improvement in the character of the nation's total expenditure. By improvement is meant that a larger proportion of the national income would then be devoted to purposes of permanent utility, as distinguished from momentary enjoyment: a larger proportion would be given to needs that are primary, as compared with needs that are secondary; a larger proportion would be allocated to the maintenance of health, and a smaller proportion to indulgences destructive of health; a larger proportion would be appropriated to things of the mind, and a smaller proportion to things of the body."[186]

Professor Bullock has devoted a very illuminating chapter to the discussion of the increase of public expenditures in modern times.[187] But none of the material collected deals with a

[185] *Constitution of U. S.*, Art. I, sec. 8: "Congress shall have power to establish post roads."

[186] R. Jones, *Nature of Taxation*, Preface by Sidney Webb.

[187] C. J. Bullock, *Selected Readings in Public Finance* (N. Y., Ginn, 1906), p. 24.

most important aspect of the phenomenon—the influence of the evolution of society.

Without entering into a technical examination of the precise stages of evolution, an impressionistic survey of the growth of the modern state reveals the following important stages: (1) The savage condition of absolute individualism and competition; (2) the tribal or elementary coöperative condition; (3) the permanent community, with equal rights and equal duties; (4) the monarchical or military condition arising out of the proximity of settled communities; (5) slavery, resulting from the indolence of the mentally strong, causing them to oppress the mentally weak, and simultaneously, the captivity of prisoners of war; (6) the influence of organized religion modifying the position of slaves, through serfdom and other stages, intermediate to modern freedom.

It would easily be possible to suggest greater subdivision, but for the purpose in hand these six stages suffice.

Prior to the third stage, taxation would not arise, such public works as might be necessary being carried out by united labor. The fourth stage introduces a class which must necessarily be set apart from the necessities of productive labor. Its members were at first paid out of the proceeds of the cultivation of the public domain, later by tribute from conquered neighbors, and then by a general contribution of a portion of the produce of all the land, the whole territory being considered as the property of the state, represented by the monarch. Private property in large holdings, comprising the proprietorship of the slaves resident on the estate, arose from laxity in administration, by which collectors of tribute gradually appropriated the areas over which they had been given jurisdiction in trust for the state. It had not then occurred to the proprietors that slaves could be detached from the soil on which they were born, so that coincident with the right to appropriate the services of the slave was the duty to provide for his subsistence. As the number of slaves increased beyond the needs of the proprietors, this duty became irksome; here the church intervened, looking after the disinherited, and, by means of spiritual weapons, levying taxes on the proprietors,

out of the proceeds of which the church was able to meet all demands of the disinherited. The growth of the numbers of those who were subject to no master, but were adequately and mercifully controlled by the church, led to a perpetual modification of the conditions of those who were still enslaved, until, step by step, modern conditions were attained. Meanwhile the great proprietors saw their estates diminishing as well as their power, and under the excuse of religious reform, revolted against the church so far as it taxed them. The result was that the propertyless class became homeless wanderers and the state was forced to consider their needs.[188] Modern taxation practically dates from the confiscation of church estates in favor of private individuals. Its cause, arising at different periods in different countries, is the growth of private property simultaneously with the emancipation of the working classes from slavery and serfdom, and the emancipation of their proprietor from any recognition of being his brother's keeper. Where the spiritual power of the church has been weakened, its place in some instances has been adequately taken by ethical teachers. The influence of the religious and ethical teachers combined, has exercised a restraining influence over the unbridled development of the institution of private property and irresponsibility, and during the last century this influence has grown and found its way into fiscal legislation. Thus the increase of taxation which is not due to increased military and naval expenditure, is due to the existence of private property, alongside of an ever growing propertyless class deprived of the legal and spiritual claim which formed part of the condition of slavery.

The modern increase of ethical influence, with the completion of the emancipation of the workers, will undoubtedly tend to cause further increase in state expenditure, and consequent taxation. How far the increase may continue is not at present apparent, but that it will increase far beyond present bounds is almost unquestionable.

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[188] The real economic basis of the tax is the collective needs that result from the political organization of society—the state; the necessity for the tax being due to the régime of private property.—S. F. Weston, *The Principles of Justice in Taxation*, p. 155.

Thus one may briefly say that much of the observable increase in public expenditures in modern times is due to the growth of the institution of private property, and the taking up by the state of the responsibility that formerly rested upon the proprietors to care for the interests of the disinherited, a function at one time adequately discharged by the church. The mystery of the increase thus largely disappears, and ceases to be a matter for alarming statistics.

CONCLUSION

The conclusions to be drawn from the preceding pages may be very briefly summarized. It has been shown that the people of this country possess in an exceptional degree the genius for standardizing, but that its application to the domain of law has been delayed, for reasons which can easily be found but into which it is not necessary to enter to any extent in the present treatise.

The law of taxation in particular reveals the utmost confusion as at present constituted, but having regard to the preceding facts, it is reasonable to suppose that this condition is only temporary. Coördination is therefore not only a desirable end but one that may be expected to be rapidly attained. The indications of movement in that direction are too obvious to be ignored. In this connection it is necessary to insure breadth of vision by an analysis of the phenomena now present, but more particularly of the history of the conditions that led up to the presentations with which all are familiar. In this process many puzzling facts are divested of their cloak and resolved into primitive simplicity.

The practical suggestions of competent investigators are already so numerous, and being so well considered, that it only becomes needful or possible to allude to them generally and in a receptive manner, with occasional remarks tending to accentuate some point which appears not to have attracted sufficient attention.

The trite saying that history repeats itself has an element of truth that has hitherto been disregarded by economists, who mostly reason as if history moved in a straight line in an observed direction. Affairs in this universe are not ordered in straight lines. Even the path of light becomes curved when we deal in terms of "light years." History does indeed repeat itself, but the repetitions occur in different planes in a spiral when the same vertical plane of thought is intersected for the

second, or the hundredth time. No moment that has passed ever returns, but the phenomena of that moment reappear, modified by the environment of a fresh plane in the ascending spiral. What has been tried and proved unsuccessful in one age may succeed in another age under different circumstances, and this is true of fiscal science. A source of taxation, all important at one time, disappears through private absorption and gradual change in the significance attached to certain words. When the same needs reappear the source is rediscovered under its disguise; the privilege of the tax farmer reappears as a franchise and eventually as a monopoly and so called "good will."[189] There is nothing new in the observation that "national wealth may be increased by taking money from the hands of the poor and putting it into the hands of the rich and powerful who know how to make money work. It is a well attested fact that prosperity will always follow when property can be transferred in a lawful and orderly manner from the many who do not know what to do with it to the few who have the skill to use it."[190] But the facts have a different significance when they suggest that "There is no getting away from the inference that a progressive transfer of more and more of the national capital from individual to collective channels would result in a positive improvement in the character of the nation's total expenditure."[191]

We are coming to recognize that the genius differs from the average man only in possessing the power to utilize more freely than most of us the powers common to us all, and that as society becomes more and more complex, so much the more valuable becomes the earning power arising from organization. The supposed financial "genius" is only the individual whom chance has placed at the long end of the lever of the power common to us all, due to an organization that is essentially the property of the state alone.

At one period of history the Church was the State, then followed Church and State, then State and Church, and lastly

189 Plehn, Bull. Univ. Washington, no. 84, 1914, p. 215.

190 D. S. Jordan, *The Fate of Iciodorum* (N. Y., Holt, 1909), p. vi.

191 Jones, *op. cit.*, Preface by Sidney Webb.

State without the Church. During these transitions we have lost sight of the conceptions which hallowed the meanings of these words. The Church once signified the embodiment of divine justice, of all that we now revere as ethics and altruism, of duty towards one's neighbor. The State then signified, and will again come to signify, the best that can be implied in the life of each for all and each enjoying the benefits of united effort. In humbleness of heart, we in this western world may come to realize that the state is not something intangible and apart from our lives, that the government is indeed a part of ourselves, and that the method of life should be to regard every individual as an end in himself or herself, and not as a means to an end; that it matters not how much work is produced, so long as those who produce it enjoy the day's work and a good article comes out at the close of the day. The taxpayer will cease to think that the best tax is no tax, but will realize that taxation is true economy, the husbanding of the surplus above our needs in the interest of all. To this end the education of the taxpayer "should be conducted in a spirit of real humility, with a profound and passionate conviction that something infinitely bigger and deeper than mere dollars and cents is at stake."[192]

For a whole generation we have become accustomed to see the needy fed and clothed and supported in sickness and old age, not according to the caprice of individuals, nor relying merely upon the ministrations of religious organizations, but as part of an organized scheme of state action supported by the taxes levied according to the faculty of the people at large. We have seen public works, sewers, streets, parks, museums, and libraries provided free of cost to those who need them, and maintained by taxation according to the ability of the whole body of citizens, the scientific test of faculty having emerged triumphant. Yet nineteen hundred years ago a great teacher in Asia Minor, dealing practically and philosophically with every phase of human life, also based his teachings on the same simple formula, "From each according to his ability, to each according to his needs,"[193]

[192] T. S. Adams, Bull. Univ. Washington, no. 84, 1914, p. 198.

[193] Cf. Luke, chap. 12. 48.

its immediate application being recorded specifically in more than one place by the chronicler of the history of the sect which he founded.[194] The oriental imagery of other days now gives place to less poetic expression, but under our modern materialized conception of the state is a germ of holier truth, and when the spiral of history in this generation passes once more through the same plane, we recognize the old formula under the name of *faculty*. The state takes up the work once done by the church, and true science—no less divine in origin if its functions be conceived in a spirit of genuine humility—leads us to the goal to which the church pointed the way.

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[194] Acts, 2. 45; 4. 32, 35.

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ERRATA

Page 162, note 63. *For* sede nim *read* sed enim.
Page 162, note 63. *For* stipendis *read* stipendio.